

# **ATTACHMENT 71**

HIGHLY CONFIDENTIAL

Tobey, Kelly J.

March 20, 2014

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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IN RE: PROCESSED EGG PRODUCTS

ANTITRUST LITIGATION

MDL NO. 2002

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08-md-02002

HIGHLY CONFIDENTIAL

VIDEO DEPOSITION OF KELLY J. TOBEY

Taken at 2510 Capital Avenue, SW

Battle Creek, Michigan

Commencing at 8:35 a.m.

Thursday, March 20, 2014

Before Trisha Cameron, RPR, CSR-6175

Henderson Legal Services, Inc.

202-220-4158

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<p style="text-align: right;">2</p> <p>1 APPEARANCES:</p> <p>2 MR. RICHARD CAMPBELL</p> <p>3 MS. SARAH ANSARI</p> <p>4 Jenner &amp; Block</p> <p>5 353 North Clark Street</p> <p>6 Chicago, Illinois 60654</p> <p>7 (312) 923-2818</p> <p>8 E-mail: rcampbell@jenner.com</p> <p>9 Appearing on behalf of The Kellogg Company.</p> <p>10</p> <p>11 MR. WILLIAM GREENE</p> <p>12 Stinson, Leonard, Street, L.L.P.</p> <p>13 150 South Fifth Street</p> <p>14 Suite 2300</p> <p>15 Minneapolis, Minnesota 55402</p> <p>16 (612) 335-1500</p> <p>17 E-mail: william.greene@stinsonleonard.com</p> <p>18 Appearing on behalf of Michael Foods.</p> <p>19</p> <p>20 ALSO PRESENT: Mark Myers, videographer.</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">4</p> <p>1 Battle Creek, Michigan</p> <p>2 March 20, 2014</p> <p>3 About 8:35 a.m.</p> <p>4 * * *</p> <p>5 VIDEOGRAPHER: We are now on the record.</p> <p>6 This is the videotaped deposition of Kelly Tobey being</p> <p>7 taken in Battle Creek, Michigan. Today is Thursday,</p> <p>8 March 20th, 2014. The time is now 8:35 a.m.</p> <p>9 And at this time, will the attorneys please</p> <p>10 state their appearances for the record, and the court</p> <p>11 reporter please swear in the witness.</p> <p>12 MR. GREENE: William Greene, G-r-e-e-n-e, of</p> <p>13 the law firm of Stinson Leonard Street. Counsel for</p> <p>14 Defendant Michael Foods.</p> <p>15 MS. ANSARI: Sarah Ansari of Jenner &amp; Block,</p> <p>16 LLP, on behalf of Kellogg and the deponent.</p> <p>17 MR. CAMPBELL: Richard Campbell, Jenner &amp;</p> <p>18 Block, on behalf of Kellogg.</p> <p>19 * * *</p> <p>20 KELLY J. TOBEY,</p> <p>21 having been first duly sworn,</p> <p>22 was examined and testified as follows:</p> <p>23 * * *</p> <p>24</p> <p>25</p>
<p style="text-align: right;">3</p> <p>1 INDEX</p> <p>2 WITNESS: PAGE</p> <p>3 KELLY J. TOBEY</p> <p>4 Examination by Mr. Greene 5</p> <p>5 Examination by Ms. Ansari 71</p> <p>6 Further Examination by Mr. Greene 75</p> <p>7</p> <p>8</p> <p>9 EXHIBITS</p> <p>10 Exhibit 1 50</p> <p>11 Exhibit 2 69</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">5</p> <p>1 EXAMINATION</p> <p>2 BY MR. GREENE:</p> <p>3 Q. Good morning, Ms. Tobey. We had a chance to meet just</p> <p>4 before the deposition. But once again, I'm William</p> <p>5 Greene. I'm going to be taking your deposition today.</p> <p>6 I'm sure Ms. Ansari and Mr. Campbell explained the</p> <p>7 procedure, but I'm just going to go over it very</p> <p>8 briefly. I'm going to be asking you questions this</p> <p>9 morning and asking you to respond.</p> <p>10 The court reporter is going to be taking down</p> <p>11 everything we both say. So it will be important for</p> <p>12 you to give an audible response. You can't -- not just</p> <p>13 a nod of the head. Is that okay?</p> <p>14 A. That's okay, yes.</p> <p>15 Q. And it's important for her benefit that we not talk</p> <p>16 over each other. I will try and not interrupt you, and</p> <p>17 it would be best for you to just wait for the end of</p> <p>18 the question to start talking so we're not talking over</p> <p>19 each other. Okay?</p> <p>20 A. Okay.</p> <p>21 Q. I will try and make my questions as clear as I can.</p> <p>22 Sometimes I won't be entirely successful. So if you</p> <p>23 don't understand a question, if anything is confusing,</p> <p>24 please just let me know, and I'll do my best to</p> <p>25 rephrase the question. Okay?</p>

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<p style="text-align: right;">6</p> <p>1 <b>A. Okay.</b></p> <p>2 Q. If you do answer a question, I'm going to assume that</p> <p>3 you understood the question; is that fair?</p> <p>4 <b>A. That's fair, yes.</b></p> <p>5 Q. Okay. If you need or want a break at any point, just</p> <p>6 let us know. We'll be glad to take a break. We take</p> <p>7 breaks from time to time in any event. But if you want</p> <p>8 a break, let us know. I would just ask if a question</p> <p>9 is pending, go ahead and complete the answer to the</p> <p>10 question before we take the break. Okay?</p> <p>11 <b>A. Okay.</b></p> <p>12 Q. All right. Is there any reason why you can't give full</p> <p>13 and complete testimony this morning?</p> <p>14 <b>A. No.</b></p> <p>15 Q. All right. Could you please state and spell your name</p> <p>16 for the record.</p> <p>17 <b>A. Yep. Kelly, K-E-L-L-Y, Tobey, T-O-B-E-Y.</b></p> <p>18 Q. What is your address?</p> <p>19 <b>A. 191 Bansill Drive, B-A-N-S-I-L-L. That's here in</b></p> <p>20 <b>Battle Creek.</b></p> <p>21 Q. And where are you employed?</p> <p>22 <b>A. Kellogg Company.</b></p> <p>23 Q. What's your business address?</p> <p>24 <b>A. It's 4 East Hamlin Avenue.</b></p> <p>25 Q. In Battle Creek?</p>	<p style="text-align: right;">8</p> <p>1 Q. Okay.</p> <p>2 <b>A. It was my first with --</b></p> <p>3 Q. With Kellogg?</p> <p>4 <b>A. Right.</b></p> <p>5 Q. Let's back up then. And tell me about your first</p> <p>6 employment position, first job.</p> <p>7 <b>A. First job like out of high school?</b></p> <p>8 Q. Yeah. I'm not interested in sort of part-time jobs</p> <p>9 while you were in high school. But the -- maybe the</p> <p>10 first post-high school job.</p> <p>11 <b>A. Okay. I was a manager of a Hickory Farms retail store.</b></p> <p>12 Q. And when did you have that position?</p> <p>13 <b>A. That was from about '89 until I'm guessing it would</b></p> <p>14 <b>have been around '94, '95.</b></p> <p>15 Q. All right. And what did you do after Hickory Farms?</p> <p>16 <b>A. I worked for M-66 Auto Body as an office manager.</b></p> <p>17 Q. What's the name of the company?</p> <p>18 <b>A. M-66 Auto Body.</b></p> <p>19 Q. Where is that?</p> <p>20 <b>A. Here in Battle Creek.</b></p> <p>21 Q. And over what time did you have that position?</p> <p>22 <b>A. That would have been '95 probably until about '98, '97,</b></p> <p>23 <b>'98.</b></p> <p>24 Q. Okay. And what did you do after that?</p> <p>25 <b>A. After that, I was doing some temp positions at Kellogg</b></p>
<p style="text-align: right;">7</p> <p>1 <b>A. In Battle Creek, yes.</b></p> <p>2 Q. What is your current position with the Kellogg Company?</p> <p>3 <b>A. Director of quality supplier management.</b></p> <p>4 Q. How long have you had that position?</p> <p>5 <b>A. That position just for a couple of months.</b></p> <p>6 Q. All right. When did you first start working at</p> <p>7 Kellogg?</p> <p>8 <b>A. In 1999.</b></p> <p>9 Q. Have you been working at Kellogg continuously since</p> <p>10 1999?</p> <p>11 <b>A. Yes, I have.</b></p> <p>12 Q. All right. Can we -- can I get your educational</p> <p>13 background starting with after high school?</p> <p>14 <b>A. Uh-huh. Yep. I have a bachelor's degree from Sienna</b></p> <p>15 <b>Heights University.</b></p> <p>16 Q. Where is that located?</p> <p>17 <b>A. In Adrian, Michigan.</b></p> <p>18 Q. And when did you receive that degree?</p> <p>19 <b>A. That was in 2001.</b></p> <p>20 Q. So you started working at Kellogg's before you</p> <p>21 graduated from college?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. Was the Kellogg's position, the one you got in 1999,</p> <p>24 your first employment position?</p> <p>25 <b>A. No.</b></p>	<p style="text-align: right;">9</p> <p>1 <b>Company through Employment Group.</b></p> <p>2 Q. And where at Kellogg were you temping?</p> <p>3 <b>A. I was in a couple different departments. Strategy</b></p> <p>4 <b>development was one of them, and then procurement was</b></p> <p>5 <b>one of them.</b></p> <p>6 Q. And in procurement, who did you work for?</p> <p>7 <b>A. Charles Vaughn.</b></p> <p>8 Q. Okay. So what did you do after the Kellogg temp</p> <p>9 positions?</p> <p>10 <b>A. I was hired into the position I was temping in. That</b></p> <p>11 <b>was my first Kellogg role.</b></p> <p>12 Q. And what was your first -- was it a full-time job?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. What was your first full-time job at Kellogg?</p> <p>15 <b>A. Administrative assistant for packaging procurement.</b></p> <p>16 Q. That's 1999?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. And you said you got your bachelor's degree in 2001?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. So were you going to school at the same time you were</p> <p>21 working at Kellogg?</p> <p>22 <b>A. Yes. I already had two associate's degrees prior to</b></p> <p>23 <b>temping, starting my temp position. And I had gone</b></p> <p>24 <b>back to Sienna Heights and started my bachelor's degree</b></p> <p>25 <b>prior to being hired by Kellogg.</b></p>

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<p style="text-align: right;">10</p> <p>1 Q. Okay. What were your associate's degrees in?</p> <p>2 <b>A. Management and accounting.</b></p> <p>3 Q. Where did you earn them, those degrees?</p> <p>4 <b>A. Through Kellogg Community College.</b></p> <p>5 Q. What were your responsibilities as administrative</p> <p>6 assistant for packaging procurement?</p> <p>7 <b>A. Schedule meetings. I would review documentation for</b></p> <p>8 <b>the packaging buyers. I mean, there was various things</b></p> <p>9 <b>they would ask me to do. There was some invoices I</b></p> <p>10 <b>would work on.</b></p> <p>11 Q. And what does -- in packaging procurement, what does</p> <p>12 that department buy?</p> <p>13 <b>A. So packaging that would go -- cartons, cases, liners</b></p> <p>14 <b>for the food.</b></p> <p>15 Q. Okay. Would that be things like corrugated boxes?</p> <p>16 <b>A. Yes. Yep.</b></p> <p>17 Q. I don't know. I may have asked. But how long were you</p> <p>18 in the position of administrative assistant for</p> <p>19 packaging procurement?</p> <p>20 <b>A. About nine months.</b></p> <p>21 Q. So still in 1999 or 2000?</p> <p>22 <b>A. That would have gone into 2000.</b></p> <p>23 Q. 2000?</p> <p>24 <b>A. Uh-huh.</b></p> <p>25 Q. And what was your next position at Kellogg's?</p>	<p style="text-align: right;">12</p> <p>1 associate buyer?</p> <p>2 <b>A. Probably about a year and a half or so. I was in</b></p> <p>3 <b>procurement up until 2012, fall of 2012. So I was in</b></p> <p>4 <b>raw material procurement for that time. So a period of</b></p> <p>5 <b>about twelve years. And I had various positions within</b></p> <p>6 <b>the raw material procurement team.</b></p> <p>7 Q. Okay. So the -- I'm trying -- the position that you</p> <p>8 started in January of 2002 --</p> <p>9 <b>A. Uh-huh.</b></p> <p>10 Q. -- were you in that position for about a year and a</p> <p>11 half?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. So into the middle of 2003?</p> <p>14 <b>A. Uh-huh. Yes.</b></p> <p>15 Q. What were your responsibilities in that position?</p> <p>16 <b>A. I was a buyer, and I had categories of chemicals and</b></p> <p>17 <b>conditioners, some of our blends. And then I took on</b></p> <p>18 <b>eggs during that time, egg portfolio.</b></p> <p>19 Q. What are blends?</p> <p>20 <b>A. Blends would be raw materials that are blended</b></p> <p>21 <b>together, and then we buy what's called a pre-mix.</b></p> <p>22 Q. Can you give me an example of a blend?</p> <p>23 <b>A. Yes. If we have spices put together and then they're</b></p> <p>24 <b>added as a topical seasoning to a cracker, that would</b></p> <p>25 <b>be a spice blend. We had sweet blends, vitamin blends.</b></p>
<p style="text-align: right;">11</p> <p>1 <b>A. It was price coordinator for packaging procurement.</b></p> <p>2 Q. What did you do as price coordinator for packaging</p> <p>3 procurement?</p> <p>4 <b>A. So I worked with the buyers. I would set up purchase</b></p> <p>5 <b>orders for them. I would enter them into the system.</b></p> <p>6 <b>If invoices came in and they didn't match the prices on</b></p> <p>7 <b>the purchase orders, I would work to resolve those</b></p> <p>8 <b>discrepancies.</b></p> <p>9 Q. Who was your supervisor in that position?</p> <p>10 <b>A. Lisa VanFulpen.</b></p> <p>11 Q. Can you spell the last name?</p> <p>12 <b>A. V-A-N, and I think it's capital F-U-L-P-E-N, to the</b></p> <p>13 <b>best of my recollection.</b></p> <p>14 Q. How long were you in that position?</p> <p>15 <b>A. About a year.</b></p> <p>16 Q. So does that bring us into 2001?</p> <p>17 <b>A. Yes. Yeah, 2001. Probably a little over a year</b></p> <p>18 <b>because my next position started in January of 2002.</b></p> <p>19 Q. What position did you start in January of 2002?</p> <p>20 <b>A. I was raw material associate buyer.</b></p> <p>21 Q. Who was your supervisor?</p> <p>22 <b>A. Shelly VanTreeck.</b></p> <p>23 Q. Can you spell that one.</p> <p>24 <b>A. Yep. V-A-N, capital T-R-E-E-C-K.</b></p> <p>25 Q. How long were you in the position of raw material</p>	<p style="text-align: right;">13</p> <p>1 Q. I think you said you took on eggs at some point. When</p> <p>2 did eggs become part of your responsibility?</p> <p>3 <b>A. To the best of my recollection, it was in the late</b></p> <p>4 <b>summer or early fall of 2002.</b></p> <p>5 Q. And how long did your responsibilities include egg</p> <p>6 purchasing?</p> <p>7 <b>A. Again, to the best of my recollection, it was about a</b></p> <p>8 <b>year. I think until late 2003. It could have been</b></p> <p>9 <b>early 2004.</b></p> <p>10 Q. So I want to see if I understand correctly. You had</p> <p>11 some involvement with egg purchasing from late summer</p> <p>12 early fall of 2002 until late 2003 or early 2004?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. So to the best of your recollection, a year and a half</p> <p>15 or less?</p> <p>16 <b>A. Uh-huh. Yes.</b></p> <p>17 Q. All right. I want to complete your work history at</p> <p>18 Kellogg, and then we'll come back. While -- during</p> <p>19 that period when you were purchasing eggs, were you --</p> <p>20 did you also have chemicals, conditioners, and blends</p> <p>21 throughout that period?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. During the period when you were purchasing eggs, were</p> <p>24 there any other products you were purchasing other than</p> <p>25 those?</p>

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<p style="text-align: right;">14</p> <p>1 <b>A. Not that I recall.</b></p> <p>2 Q. All right. At the point when you stopped being</p> <p>3 involved in purchasing eggs, did you take on a new</p> <p>4 position?</p> <p>5 <b>A. I can't remember exactly when I went from associate</b></p> <p>6 <b>buyer to buyer, but my categories did change.</b></p> <p>7 Q. Okay. What's the difference between associate buyer</p> <p>8 and buyer?</p> <p>9 <b>A. It's just progression in -- progression in learning</b></p> <p>10 <b>categories.</b></p> <p>11 Q. When you were an associate buyer and you were involved</p> <p>12 in eggs, was there anybody else at Kellogg's who was</p> <p>13 involved in purchasing eggs?</p> <p>14 <b>A. No.</b></p> <p>15 Q. When you were an associate buyer involved in purchasing</p> <p>16 eggs, who was your supervisor?</p> <p>17 <b>A. Shelly VanTreeck.</b></p> <p>18 Q. Okay. And she was your supervisor throughout the time</p> <p>19 that you purchased eggs?</p> <p>20 <b>A. Well, she was -- I believe there was a change, and</b></p> <p>21 <b>Christine Wentworth was also -- she was -- both of them</b></p> <p>22 <b>were my managers, and I don't remember the exact</b></p> <p>23 <b>timeframe but --</b></p> <p>24 Q. Okay. So did you become a buyer as distinguished from</p> <p>25 an associate buyer in late 2003, early 2004?</p>	<p style="text-align: right;">16</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. All right. And who was supervising you when you were</p> <p>3 buyer in 2004?</p> <p>4 <b>A. Could have been Christine Wentworth. Could have been</b></p> <p>5 <b>Shelly VanTreeck.</b></p> <p>6 Q. So what was your next position or -- withdrawn. In</p> <p>7 your progression at Kellogg's from that point, are you</p> <p>8 getting new positions or are you simply changing the</p> <p>9 portfolio of products you're buying?</p> <p>10 <b>A. Both occurred.</b></p> <p>11 Q. Okay. Well, let's talk about both then.</p> <p>12 <b>A. Okay.</b></p> <p>13 Q. What was the next change in your employment at</p> <p>14 Kellogg's either in your position or in the products</p> <p>15 you were buying?</p> <p>16 <b>A. In the products I was buying they changed pretty often.</b></p> <p>17 <b>I would change every usually six to nine months</b></p> <p>18 <b>depending on what was going on with our team.</b></p> <p>19 Q. Was that common within procurement at Kellogg's?</p> <p>20 <b>A. Yes, it was common.</b></p> <p>21 Q. To change people frequently?</p> <p>22 <b>A. Right. Change roles, change categories that were being</b></p> <p>23 <b>purchased.</b></p> <p>24 Q. Did anyone at Kellogg's ever explain the rationale for</p> <p>25 changing people frequently?</p>
<p style="text-align: right;">15</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. And when you became a buyer as opposed to associate</p> <p>3 buyer, did you stop being involved in eggs?</p> <p>4 <b>A. I don't know if that was the exact time it changed. I</b></p> <p>5 <b>know my categories did change in 2004.</b></p> <p>6 Q. Okay. So may or may not have coincided with you</p> <p>7 becoming a buyer?</p> <p>8 <b>A. Correct.</b></p> <p>9 Q. When did your categories change?</p> <p>10 <b>A. 2004. I remember taking on the fruit category.</b></p> <p>11 Q. In 2004 you stopped purchasing eggs?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Correct?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. And you started purchasing fruit?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. What does purchasing fruit entail? Are you purchasing</p> <p>18 fresh fruit?</p> <p>19 <b>A. No. We have freeze dried fruit. We have fruit purees</b></p> <p>20 <b>that go in the fillings. We have some fruit pieces.</b></p> <p>21 <b>So various different types of fruits.</b></p> <p>22 Q. But you weren't buying perishable fruits?</p> <p>23 <b>A. No.</b></p> <p>24 Q. And at this point or at some point you got the title of</p> <p>25 buyer?</p>	<p style="text-align: right;">17</p> <p>1 <b>A. Well, I don't know that anybody explained the</b></p> <p>2 <b>rationale.</b></p> <p>3 Q. Do you have some understanding of the rationale?</p> <p>4 <b>A. Yes. It could depend if there were changes in</b></p> <p>5 <b>personnel. If there were -- you know, if someone came</b></p> <p>6 <b>in with a background in a different commodity, then</b></p> <p>7 <b>we'd want to make that change. Progression in the</b></p> <p>8 <b>role, you could take on something that was more</b></p> <p>9 <b>strategic or more difficult.</b></p> <p>10 Q. Okay. So what was the next -- what was your next</p> <p>11 progression at Kellogg's after you were buying fruit in</p> <p>12 the 2004 period?</p> <p>13 <b>A. As for my next position?</b></p> <p>14 Q. Yes.</p> <p>15 <b>A. Next position would have been senior manager.</b></p> <p>16 Q. When did you take that position?</p> <p>17 <b>A. In 2004. No. 2009.</b></p> <p>18 Q. In 2009?</p> <p>19 <b>A. 2009.</b></p> <p>20 Q. So between 2004 and 2009 you were a buyer?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. Let's talk about the products you went through during</p> <p>23 that period. Were you fruit throughout 2004 through</p> <p>24 2009?</p> <p>25 <b>A. No.</b></p>

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<p style="text-align: right;">18</p> <p>1 Q. So after fruit, what did you buy?</p> <p>2 <b>A. I had fruit. I had wheat and flour for a period of</b></p> <p>3 <b>time. I had soy. I had flavors. We have about -- to</b></p> <p>4 <b>give you context, we have about 36 different material</b></p> <p>5 <b>categories. Over the course of my time in procurement,</b></p> <p>6 <b>I managed about two-thirds of those, and a couple of</b></p> <p>7 <b>them more -- I had the vitamin portfolio two different</b></p> <p>8 <b>times.</b></p> <p>9 Q. When you say 36 different categories, would eggs be one</p> <p>10 of those 36?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. And you at one point or another, you handled close to</p> <p>13 two-thirds of the categories?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. All right. You became a senior manager in 2009?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. And what was the -- what were your responsibilities in</p> <p>18 that position?</p> <p>19 <b>A. So my responsibilities, I still had a couple categories</b></p> <p>20 <b>I was managing, and I also became a people manager.</b></p> <p>21 Q. Still had a couple categories of buying?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. Were you still involved in procurement?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. As far as managing people, what did that entail?</p>	<p style="text-align: right;">20</p> <p>1 <b>in 2002, Margie Secander was the -- that was senior</b></p> <p>2 <b>director of the raw material team.</b></p> <p>3 Q. The position that John Wolf would later occupy?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. You're not sure when you were an egg buyer if John Wolf</p> <p>6 was in that position or not?</p> <p>7 <b>A. I don't recall that he was. But there was a change</b></p> <p>8 <b>with Margie, I believe it was late 2002.</b></p> <p>9 Q. What did you do for Kellogg's after you were senior</p> <p>10 manager?</p> <p>11 <b>A. After senior manager in 2012 I moved into the quality</b></p> <p>12 <b>supplier management team as a technical manager.</b></p> <p>13 Q. What does the quality supplier management team do?</p> <p>14 <b>A. We have oversight over approving suppliers and raw</b></p> <p>15 <b>materials for -- well, suppliers and raw materials. So</b></p> <p>16 <b>it's all on the raw material side.</b></p> <p>17 Q. I think you used the term technical manager.</p> <p>18 <b>A. Uh-huh.</b></p> <p>19 Q. What does that mean?</p> <p>20 <b>A. It's pretty much the same as a senior manager. It's a</b></p> <p>21 <b>technical manager. We're in the research and</b></p> <p>22 <b>development building. It's just different terminology</b></p> <p>23 <b>they use.</b></p> <p>24 Q. Who do you work with in the quality supplier management</p> <p>25 team?</p>
<p style="text-align: right;">19</p> <p>1 <b>A. That entailed writing development reviews. And I had</b></p> <p>2 <b>started out with two people that were reporting to me.</b></p> <p>3 <b>So I had accountability to make sure that they were</b></p> <p>4 <b>meeting their objectives and purchasing, signing off on</b></p> <p>5 <b>the contracts they were committing to.</b></p> <p>6 Q. Did you have responsibility over still a particular set</p> <p>7 of products?</p> <p>8 <b>A. I did personally. So I was managing a vitamin category</b></p> <p>9 <b>at that time. And then my direct reports would have</b></p> <p>10 <b>various categories. So I would have oversight on all</b></p> <p>11 <b>those.</b></p> <p>12 Q. Okay. Who did you report to when you were a senior</p> <p>13 manager in 2009?</p> <p>14 <b>A. John Wolf.</b></p> <p>15 Q. Was that the first time you reported to John Wolf?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. Had you worked with Mr. Wolf in any capacity before</p> <p>18 2009?</p> <p>19 <b>A. Yes. He was the director of the raw material team. So</b></p> <p>20 <b>that's who Shelly VanTreeck and Christine Wentworth</b></p> <p>21 <b>reported to.</b></p> <p>22 Q. So when you were buying eggs, he was a level above your</p> <p>23 supervisors?</p> <p>24 <b>A. At that time -- I'm trying to remember when John came</b></p> <p>25 <b>into his role because when I was first hired by Shelly</b></p>	<p style="text-align: right;">21</p> <p>1 <b>A. I report into Ann Barea, B-A-R-E-A.</b></p> <p>2 Q. Okay. And what is her position?</p> <p>3 <b>A. She is senior director, quality supplier management.</b></p> <p>4 Q. And does quality supply management cover all 36</p> <p>5 categories?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. Are the people in quality -- are there people in</p> <p>8 quality supply management who have technical or</p> <p>9 scientific backgrounds?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. I think you mentioned research and development. Are</p> <p>12 there research and development people who work in</p> <p>13 quality supply management?</p> <p>14 <b>A. No.</b></p> <p>15 Q. They're separate?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. But there are some technical or scientific personnel</p> <p>18 who work in quality supply management?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. What do the technical or scientific people do?</p> <p>21 <b>A. They are the actual QIM, so quality ingredient</b></p> <p>22 <b>managers. And they would write specifications and do</b></p> <p>23 <b>supplier approvals. And then manage questions --</b></p> <p>24 <b>technical questions that come from plants or suppliers.</b></p> <p>25 Q. What does it mean to write specifications?</p>



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<p style="text-align: right;">22</p> <p>1 <b>A. To develop a specification for a raw material.</b></p> <p>2 Q. Can you explain what does that mean, to develop a</p> <p>3 specification for raw material.</p> <p>4 <b>A. So based on parameters we have from quality,</b></p> <p>5 <b>functionality, and food safety, we would put those</b></p> <p>6 <b>parameters into the spec and then review that with the</b></p> <p>7 <b>supplier, make sure we have agreement and alignment.</b></p> <p>8 Q. I have in 2012 you joined the quality supply management</p> <p>9 team as a technical manager, correct?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. And is that your position today?</p> <p>12 <b>A. No. Today I'm director of quality supplier management.</b></p> <p>13 <b>So that change was effective January 1st.</b></p> <p>14 Q. Of 2014?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. Oh, congratulations.</p> <p>17 <b>A. Thank you.</b></p> <p>18 Q. And so we're current?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. All right. Let's go back to the position that involved</p> <p>21 eggs. Let's see if I can find it. If I -- if my notes</p> <p>22 are correct, we're dealing with a period of a year and</p> <p>23 a half or less.</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. Okay. From late summer early fall of 2002, to late</p>	<p style="text-align: right;">24</p> <p>1 before you took the position?</p> <p>2 <b>A. I don't remember exactly. I do remember when we</b></p> <p>3 <b>purchased Keebler and we had folks in both</b></p> <p>4 <b>organizations that were buying the same commodities,</b></p> <p>5 <b>that they were working on putting those together. So</b></p> <p>6 <b>that would have been part of our normal process.</b></p> <p>7 Q. Let me clear up one thing at the outset because we used</p> <p>8 the term eggs. When you were involved in purchasing</p> <p>9 during this year and a half period, did Kellogg's ever</p> <p>10 buy shell eggs?</p> <p>11 <b>A. Buy shell eggs? We bought -- no.</b></p> <p>12 Q. Right. We're going to talk about egg products.</p> <p>13 <b>A. Right.</b></p> <p>14 Q. But I'm specifically focusing on eggs in the shell.</p> <p>15 <b>A. Okay.</b></p> <p>16 Q. Did Kellogg's buy eggs -- buy shell eggs?</p> <p>17 <b>A. No.</b></p> <p>18 Q. To your knowledge, has Kellogg's ever purchased shell</p> <p>19 eggs?</p> <p>20 <b>A. Not to my knowledge.</b></p> <p>21 Q. Okay. So I'm going to try and use the term egg</p> <p>22 products. But from this point on, if we're referring</p> <p>23 to eggs, we're not talking about shell eggs; is that</p> <p>24 fair?</p> <p>25 <b>A. Yes, that's fair.</b></p>
<p style="text-align: right;">23</p> <p>1 2003 or early 2004, correct?</p> <p>2 <b>A. Correct. Yep.</b></p> <p>3 Q. And at that point you were an associate buyer; is that</p> <p>4 right?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Was that true throughout the time that you were</p> <p>7 involved in eggs?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. Prior to the period when you started working on buying</p> <p>10 eggs for Kellogg's, did you have any background</p> <p>11 involving eggs?</p> <p>12 <b>A. No.</b></p> <p>13 Q. When you took on that responsibility regarding eggs,</p> <p>14 did you get any training involving eggs?</p> <p>15 <b>A. I'm sure I did. I don't remember exactly. I can't</b></p> <p>16 <b>give you specifics on what that would have entailed.</b></p> <p>17 Q. Do you remember who trained you?</p> <p>18 <b>A. I believe it was Kim Caldarone who had eggs prior to</b></p> <p>19 <b>myself. She was with -- she was with the Keebler</b></p> <p>20 <b>company when we acquired Keebler.</b></p> <p>21 Q. When was that -- when did that acquisition occur?</p> <p>22 <b>A. That was in late 2001.</b></p> <p>23 Q. Was Kellogg's buying eggs before that?</p> <p>24 <b>A. Yes, we were.</b></p> <p>25 Q. Was Kim Caldarone buying already the eggs for Kellogg's</p>	<p style="text-align: right;">25</p> <p>1 Q. When you started in your position involving the</p> <p>2 purchase of egg products, what were the egg products</p> <p>3 that Kellogg's purchased?</p> <p>4 <b>A. We purchased liquid whole eggs, dried whole eggs, and</b></p> <p>5 <b>dried egg whites or powdered egg whites.</b></p> <p>6 Q. Do you use dried or powdered interchangeably, is that</p> <p>7 the same term?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. So those three. I've got liquid whole eggs, dried</p> <p>10 whole eggs, and dried or powdered egg whites.</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. Okay. Anything else?</p> <p>13 <b>A. Not to my recollection.</b></p> <p>14 Q. Okay. What Kellogg's products were the liquid whole</p> <p>15 eggs used to make?</p> <p>16 <b>A. Eggos.</b></p> <p>17 Q. Eggo waffles?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. Anything else?</p> <p>20 <b>A. Not to my recollection, no.</b></p> <p>21 Q. And where are the Eggo waffles -- where were the Eggo</p> <p>22 waffles made?</p> <p>23 <b>A. I believe it went into two. It would have been Blue</b></p> <p>24 <b>Anchor, New Jersey, and Rossville, Tennessee.</b></p> <p>25 Q. What Kellogg's products were the dried whole eggs used</p>



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<p style="text-align: right;">26</p> <p>1 to make?</p> <p>2 <b>A. It would have gone into Eggo waffles as well in a</b></p> <p>3 <b>couple of the plants and some of the cookies from</b></p> <p>4 <b>Keebler.</b></p> <p>5 Q. Were the dried whole eggs used to make any other</p> <p>6 products?</p> <p>7 <b>A. Not to my recollection.</b></p> <p>8 Q. Where are the -- you said where the Eggo waffles were</p> <p>9 made. Where were the cookies made?</p> <p>10 <b>A. There were several different -- several different</b></p> <p>11 <b>plants.</b></p> <p>12 Q. Can you -- to the best of your recollection, can you</p> <p>13 list those plants?</p> <p>14 <b>A. Charlotte, North Carolina; Florence, Kentucky; Augusta,</b></p> <p>15 <b>Georgia; Grand Rapids, Michigan.</b></p> <p>16 Q. All right. And were the dried whole eggs used to make</p> <p>17 any products other than the Eggo waffles or the</p> <p>18 cookies?</p> <p>19 <b>A. Not to my recollection.</b></p> <p>20 Q. And the final category, the dried egg whites.</p> <p>21 <b>A. Uh-huh.</b></p> <p>22 Q. What Kellogg's products were the dried egg whites used</p> <p>23 to make?</p> <p>24 <b>A. Those went into our veggie foods in our Zanesville,</b></p> <p>25 <b>Ohio, plants.</b></p>	<p style="text-align: right;">28</p> <p>1 MS. ANSARI: Okay.</p> <p>2 MR. GREENE: I have --</p> <p>3 MS. ANSARI: Sorry. We just --</p> <p>4 MR. CAMPBELL: We have many of them but not</p> <p>5 all.</p> <p>6 MR. GREENE: I have an extra set from</p> <p>7 yesterday. So I'll use my notebook.</p> <p>8 MS. ANSARI: Thank you very much. Thank you.</p> <p>9 BY MR. GREENE:</p> <p>10 Q. Now, Neal Exhibit 10 is a document bates numbered</p> <p>11 KEL00017901 to 17902. The bates number KEL, Ms. Tobey,</p> <p>12 it means it was produced by Kellogg's.</p> <p>13 <b>A. Okay.</b></p> <p>14 Q. And this is an e-mail string that -- I think all of the</p> <p>15 e-mails are occurring January 6th, 2003.</p> <p>16 <b>A. Okay.</b></p> <p>17 Q. There are it looks like four of them. And at this</p> <p>18 point, January in 2003, you were an associate buyer</p> <p>19 involved in eggs?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. Okay. I wonder if you can identify some of the people</p> <p>22 who are in this correspondence. There's a reference to</p> <p>23 Trudy Cravens.</p> <p>24 <b>A. Uh-huh.</b></p> <p>25 Q. Who was Trudy Cravens?</p>
<p style="text-align: right;">27</p> <p>1 Q. When you say the "veggie foods," what do you mean?</p> <p>2 <b>A. Worthington Foods and MorningStar Farms are the brands.</b></p> <p>3 Q. And can you just elaborate? When you say veggie foods,</p> <p>4 what kind of foods are we talking about?</p> <p>5 <b>A. They're meat substitute products.</b></p> <p>6 Q. And are they all made -- at the time you were buying,</p> <p>7 were they all made in Zanesville, Ohio?</p> <p>8 <b>A. Yes. Well, yes. And then we had a couple</b></p> <p>9 <b>co-manufacturers. But I believe all the egg whites</b></p> <p>10 <b>went to Zanesville.</b></p> <p>11 Q. Do you recognize a plant location called Worthington?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Were there any egg products that were ordered for the</p> <p>14 Worthington location?</p> <p>15 <b>A. They could have gone there. Worthington was in</b></p> <p>16 <b>Dearborn, Ohio. So it's close to the Zanesville plant.</b></p> <p>17 <b>And they did some pre-blends there. So the egg whites</b></p> <p>18 <b>could have been part of a pre-mix that they would have</b></p> <p>19 <b>put together. That would have been for the same</b></p> <p>20 <b>finished food. It would have been for the Worthington</b></p> <p>21 <b>products, MorningStar Farms.</b></p> <p>22 Q. Let me ask you to take a look at Neal Exhibit 10.</p> <p>23 MR. CAMPBELL: I don't think we have it.</p> <p>24 Show us which one that is, Bill.</p> <p>25 MR. GREENE: It's this one right here.</p>	<p style="text-align: right;">29</p> <p>1 <b>A. Trudy Cravens, I don't recollect what her position was.</b></p> <p>2 <b>I know she was at the plant in Zanesville or</b></p> <p>3 <b>Worthington.</b></p> <p>4 Q. Do you use those two, Zanesville or Worthington,</p> <p>5 interchangeably because they work so closely together?</p> <p>6 <b>A. Yes, I do. Uh-huh.</b></p> <p>7 Q. But you don't recall anything else about her position?</p> <p>8 <b>A. No.</b></p> <p>9 Q. Okay. And there's a -- there is a reference to Kurt</p> <p>10 Plouse. I don't know if I'm pronouncing it correctly.</p> <p>11 P-L-O-U-S-E.</p> <p>12 <b>A. Uh-huh.</b></p> <p>13 Q. Who was Mr. Plouse?</p> <p>14 <b>A. I don't recall what his position was.</b></p> <p>15 Q. Now, if you look at the correspondence and with these</p> <p>16 e-mails, I usually assume the last comes first.</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. So I'm going to the second page at the bottom.</p> <p>19 <b>A. Uh-huh.</b></p> <p>20 Q. You write to Ms. Cravens, we're currently bidding out</p> <p>21 our egg business for 2003. I sent out a request for</p> <p>22 information and received a question on specification</p> <p>23 number, and it includes a number. Do you see that?</p> <p>24 <b>A. Yes, I do.</b></p> <p>25 Q. And then below where it says thanks, Kelly, you wrote</p>

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<p style="text-align: right;">30</p> <p>1 my question regarding specification No. 109110 pertains</p> <p>2 to the gel strength (listed in chemical properties) as</p> <p>3 to if less than 300 is a correct statement, question</p> <p>4 mark. Also, if gel strength is a requirement for the</p> <p>5 Certificate of Analysis, what is the preferred method</p> <p>6 of testing for gel strength, or is a specific lab used</p> <p>7 for that testing. Do you see that?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. Can you explain what you were asking in this e-mail?</p> <p>10 <b>A. To the best of my recollection, that bottom paragraph</b></p> <p>11 <b>would have been taken directly from a question a</b></p> <p>12 <b>supplier sent to me. So I would have just copied and</b></p> <p>13 <b>pasted that here for Trudy to respond to.</b></p> <p>14 Q. Did you have some independent understanding of what the</p> <p>15 -- what the supplier was asking?</p> <p>16 <b>A. Yes. Gel strengths would be critical in our process to</b></p> <p>17 <b>hold veggie patties together. So it's a critical</b></p> <p>18 <b>parameter of the eggs.</b></p> <p>19 Q. Can you explain that a little bit. First, let's talk</p> <p>20 about the product.</p> <p>21 <b>A. Yep.</b></p> <p>22 Q. These are -- what is a veggie patty?</p> <p>23 <b>A. Veggie patty is a soy based -- so it's a meet</b></p> <p>24 <b>substitute patty. So it's based of soy. And to get</b></p> <p>25 <b>the properties -- to get the product to bind together,</b></p>	<p style="text-align: right;">32</p> <p>1 Q. And the question is then it appears to be passed from</p> <p>2 Trudy to Kurt Plouse. Is that how you read this?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. And then Kurt Plouse offers what looks to me like a</p> <p>5 more technical answer. Do you see that?</p> <p>6 <b>A. Yes, I do.</b></p> <p>7 Q. Which from that would you conclude that Kurt Plouse has</p> <p>8 some kind of technical position?</p> <p>9 <b>A. Yes, I would.</b></p> <p>10 Q. All right. And he writes yes, less than 300 is the</p> <p>11 specification, as it is a test that measures the drop</p> <p>12 of a penetrometer --</p> <p>13 <b>A. Uh-huh.</b></p> <p>14 Q. -- cone into an egg gel. The less the penetration, the</p> <p>15 stronger the gel. This is an in-house method developed</p> <p>16 in Worthington many years ago and cannot be related to</p> <p>17 other gel strength methods by other labs. What does</p> <p>18 that mean?</p> <p>19 <b>A. It means that any standard -- or I take it to mean any</b></p> <p>20 <b>other standard lab analysis that would be commonly done</b></p> <p>21 <b>for eggs, this test that was done at Worthington was</b></p> <p>22 <b>different. So it couldn't be replicated in a standard</b></p> <p>23 <b>lab.</b></p> <p>24 Q. So it wouldn't be sufficient for Kellogg's to know that</p> <p>25 a -- that an egg product had satisfied some other</p>
<p style="text-align: right;">31</p> <p>1 <b>you need some type of binder. So in this product, egg</b></p> <p>2 <b>white was the binder used or one of the binders used.</b></p> <p>3 Q. So just so I'm -- let's see if I can understand it in a</p> <p>4 little less technical way. You're trying to get soy to</p> <p>5 function a little bit more like a hamburger or other</p> <p>6 kind of patty?</p> <p>7 <b>A. Uh-huh.</b></p> <p>8 Q. Is that right?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. And in order to do that, you need the ingredients that</p> <p>11 you're using to help bind the product together?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Okay. And egg whites were used to make that binding</p> <p>14 possible?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. Okay.</p> <p>17 <b>A. As one ingredient, yes.</b></p> <p>18 Q. As one ingredient. And I think you referred -- I think</p> <p>19 you indicated that gel strength would be critical in</p> <p>20 that process.</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. And if the gel strength wasn't sort of up to the</p> <p>23 standard, then the product wouldn't function the way it</p> <p>24 needed to?</p> <p>25 <b>A. That's correct.</b></p>	<p style="text-align: right;">33</p> <p>1 commercial standard, correct?</p> <p>2 <b>A. Without -- without doing this type of test, right?</b></p> <p>3 Q. In order to make sure the product would work for</p> <p>4 Kellogg's, it would have to pass the Kellogg's specific</p> <p>5 test.</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. All right.</p> <p>8 <b>A. And I'd say unless that type of test could be</b></p> <p>9 <b>replicated by another -- by another lab analysis.</b></p> <p>10 Q. All right. And what Mr. Plouse is saying is at least</p> <p>11 at this stage, it cannot be related to other gel</p> <p>12 strength methods by other labs.</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. Okay.</p> <p>15 <b>A. Correct.</b></p> <p>16 Q. That is for Kellogg's -- for Kellogg's to be able to</p> <p>17 use it, Kellogg's had to be satisfied it passed the</p> <p>18 Kellogg's test?</p> <p>19 <b>A. Uh-huh. Yes.</b></p> <p>20 Q. And then he goes on, a word of caution. If we are,</p> <p>21 quote, bidding out, unquote, our egg business, it</p> <p>22 should be remembered that there have been occasions in</p> <p>23 the past when egg white solids passed laboratory</p> <p>24 testing but did not pass functionality testing on the</p> <p>25 bench or in the plant.</p>

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<p style="text-align: right;">34</p> <p>1 <b>A. Uh-huh.</b></p> <p>2 Q. What does that mean?</p> <p>3 <b>A. I take that to mean that there may have been other test</b></p> <p>4 <b>results that would have been on a specification or on a</b></p> <p>5 <b>supplier's COA, Certificate of Analysis, that may have</b></p> <p>6 <b>passed what we had as our spec. But if this type of</b></p> <p>7 <b>test was not performed, then it may not pass our</b></p> <p>8 <b>functionality requirements.</b></p> <p>9 Q. And you had -- as the egg buyer, did you have</p> <p>10 experience where products supplied by particular egg</p> <p>11 product suppliers did not pass Kellogg's tests?</p> <p>12 <b>A. Not to my recollection at the time of my tenure during</b></p> <p>13 <b>eggs.</b></p> <p>14 Q. Well, you see the next sentence says most noticeable is</p> <p>15 the incident with Sonstegard egg white solids in August</p> <p>16 2001. Do you see that?</p> <p>17 <b>A. I do.</b></p> <p>18 Q. Were you familiar with that incident?</p> <p>19 <b>A. No, I'm not.</b></p> <p>20 Q. Well, were you -- you learned about the incident when</p> <p>21 you were an egg buyer, correct?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. What did you learn about that incident?</p> <p>24 <b>A. I don't remember other than what I'm reading here.</b></p> <p>25 Q. Was it your understanding based on what you were</p>	<p style="text-align: right;">36</p> <p>1 on the quality of its products, correct?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. And is it also the case that Kellogg's places a high</p> <p>4 value on the quality of the ingredients it uses?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. And the appropriateness and functionality of those</p> <p>7 ingredients?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. As the egg buyer, did you consider the egg white solids</p> <p>10 of one supplier to be interchangeable with egg white</p> <p>11 solids that would be offered by any other supplier?</p> <p>12 <b>A. I would only assume that if they had been tested by our</b></p> <p>13 <b>facility.</b></p> <p>14 Q. And if they hadn't been tested by your facility, you</p> <p>15 would not treat them as interchangeable?</p> <p>16 <b>A. No.</b></p> <p>17 Q. I want to look at Neal Exhibit 11. This is KEL00017906</p> <p>18 to 17907. This is I think just a few days after the</p> <p>19 previous correspondence that we were looking at. The</p> <p>20 previous correspondence I think was January 6th. This</p> <p>21 correspondence is January 9th.</p> <p>22 <b>A. Uh-huh.</b></p> <p>23 Q. And this is, I believe, three e-mails in the string.</p> <p>24 The earliest of them apparently from Ronald McDermott.</p> <p>25 Who was Ronald McDermott at this time?</p>
<p style="text-align: right;">35</p> <p>1 hearing from other people at Kellogg that the</p> <p>2 Sonstegard product had failed this gel strength test?</p> <p>3 <b>A. That's what I infer from reading this e-mail. Yes.</b></p> <p>4 Q. And you see at the top of the page this is -- appears</p> <p>5 to be the final e-mail, this now from Trudy to you,</p> <p>6 correct?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. And she writes -- and I'm -- you can always read any</p> <p>9 portion that you want. I'm not necessarily going to</p> <p>10 read every word.</p> <p>11 Kurt raises an important point regarding</p> <p>12 testing on the bench and in production before we accept</p> <p>13 a bid on egg whites. For many of our products, the</p> <p>14 functionality of the egg whites is critical to the</p> <p>15 texture of the product. Do you see that?</p> <p>16 <b>A. Yes, I do.</b></p> <p>17 Q. Was that your understanding, that the functionality of</p> <p>18 the egg whites was critical to the texture of the</p> <p>19 product?</p> <p>20 <b>A. Yes, it was.</b></p> <p>21 Q. And was it also your understanding as the egg buyer</p> <p>22 that the testing that was done by Kellogg's was</p> <p>23 critical to getting the right eggs?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. Okay. And Kellogg's as a company placed a high value</p>	<p style="text-align: right;">37</p> <p>1 <b>A. I believe he was the plant manager at that time.</b></p> <p>2 Q. How does plant manager relate to the other people that</p> <p>3 we were seeing in these e-mails?</p> <p>4 <b>A. He would have been over all the entire operations of</b></p> <p>5 <b>the plant. Trudy Cravens, I don't remember exactly</b></p> <p>6 <b>what her role was at the plant at that time.</b></p> <p>7 Q. So Ron McDermott would have been sort of above Trudy</p> <p>8 Cravens in the hierarchy of those plants, the plants</p> <p>9 Zanesville and Worthington?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. Okay. And in the e-mail that Mr. McDermott writes to</p> <p>12 you on Thursday, January 9th at 11:06 a.m. -- and</p> <p>13 again, feel free to read all the document, even if I</p> <p>14 just read selected portions. It says as you probably</p> <p>15 know from Shashi or others, we had a major problem here</p> <p>16 with Sonstegard EWS. Would you read EWS as egg white</p> <p>17 solids?</p> <p>18 <b>A. Yes, I would.</b></p> <p>19 Q. And so, again, Mr. McDermott is telling you about the</p> <p>20 Sonstegard problem that you identified before?</p> <p>21 <b>A. Uh-huh. Yes.</b></p> <p>22 Q. In the following sentence, it says in the end, Shashi</p> <p>23 and Pat Mitchell told Sonstegard that they were going</p> <p>24 back to MG Waldbaum/Wakefield, the sentence goes on.</p> <p>25 Do you recognize who MG Waldbaum/Wakefield is?</p>

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<p style="text-align: right;">38</p> <p>1 <b>A. I'm familiar with them as a supplier.</b></p> <p>2 Q. Do you know who -- if they are affiliated with anyone</p> <p>3 else?</p> <p>4 <b>A. I do not, no.</b></p> <p>5 Q. You don't recognize any affiliation between MG Waldbaum</p> <p>6 and any other company?</p> <p>7 <b>A. No.</b></p> <p>8 Q. But your reading here and your understanding was that</p> <p>9 after the problems with the Sonstegard product, the</p> <p>10 company decided to go back to another vendor,</p> <p>11 MG Waldbaum to buy the egg white solids?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. And that was based on the characteristics, physical</p> <p>14 characteristics of the egg white solids, correct?</p> <p>15 <b>A. Correct.</b></p> <p>16 Q. That the Sonstegard egg white solids did not perform</p> <p>17 the way that the MG Waldbaum egg white solids</p> <p>18 performed, correct?</p> <p>19 <b>A. Correct.</b></p> <p>20 Q. And the decision to go from Sonstegard to MG Waldbaum</p> <p>21 wasn't based on price, correct?</p> <p>22 <b>A. That would be correct from what I'm reading here. Yes.</b></p> <p>23 Q. From the final paragraph -- I'm sorry. Second to last</p> <p>24 paragraph of Mr. McDermott's e-mail. I guess the main</p> <p>25 point for us is that with highly functional ingredients</p>	<p style="text-align: right;">40</p> <p>1 Q. And other than that meeting for 45 minutes, did you do</p> <p>2 anything else to prepare for your deposition?</p> <p>3 <b>A. No.</b></p> <p>4 Q. Did you review documents at that session?</p> <p>5 <b>A. We reviewed a couple documents, yes.</b></p> <p>6 Q. Do you have familiarity with the term reverse auction?</p> <p>7 <b>A. Yes, I do.</b></p> <p>8 Q. Okay. What is a reverse auction?</p> <p>9 <b>A. When you go out for a bid, so we put items out for</b></p> <p>10 <b>contract, and we'd start with -- you could put in a</b></p> <p>11 <b>price, the top price you're willing to pay. And then</b></p> <p>12 <b>the suppliers would price below that and put in their</b></p> <p>13 <b>bids if they chose to do so.</b></p> <p>14 Q. Can you explain -- were reverse auctions used in</p> <p>15 procurement of eggs?</p> <p>16 <b>A. At that time, they were. It was something that we were</b></p> <p>17 <b>trialing.</b></p> <p>18 Q. I'm sorry. What was the word?</p> <p>19 <b>A. Trialing, that we were looking at to see if it would</b></p> <p>20 <b>work. We picked a couple different categories that we</b></p> <p>21 <b>used the technology.</b></p> <p>22 Q. Can you explain a little bit more about the mechanics</p> <p>23 of the reverse auction.</p> <p>24 <b>A. Uh-huh. You would invite the suppliers to participate.</b></p> <p>25 <b>We reviewed specifications and collected documentation</b></p>
<p style="text-align: right;">39</p> <p>1 such as EWS with other proteins we need to be cautious.</p> <p>2 And then the paragraph goes on. What was your</p> <p>3 understanding of what Mr. McDermott meant by that</p> <p>4 sentence?</p> <p>5 <b>A. We just need to make sure that we have the right</b></p> <p>6 <b>functionality in place when we're contracting for an</b></p> <p>7 <b>egg white solid.</b></p> <p>8 Q. In other words, Kellogg's would need to make sure that</p> <p>9 it was not simply buying an egg white solid but buying</p> <p>10 a particular egg white solid that would meet it's</p> <p>11 needs, correct?</p> <p>12 <b>A. Correct.</b></p> <p>13 Q. What did you do to prepare for your deposition today?</p> <p>14 <b>A. I had a discussion with these two folks a couple of</b></p> <p>15 <b>days ago at the office.</b></p> <p>16 Q. And these two folks would be Mr. Campbell and</p> <p>17 Ms. Ansari?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. Not the court reporter and the videographer, you did</p> <p>20 didn't talk to them before?</p> <p>21 <b>A. No.</b></p> <p>22 Q. When was that, a couple days ago you said?</p> <p>23 <b>A. Tuesday, I believe.</b></p> <p>24 Q. How long did you meet with them?</p> <p>25 <b>A. For about 45 minutes.</b></p>	<p style="text-align: right;">41</p> <p>1 <b>beforehand. And then it was an auction. So there was</b></p> <p>2 <b>a time period for the auction. They would log onto an</b></p> <p>3 <b>internet site. They would have visibility to each</b></p> <p>4 <b>specification by number and the volume, and then they</b></p> <p>5 <b>would be able to enter their pricing. It was a live</b></p> <p>6 <b>auction so suppliers would put their bids in, and the</b></p> <p>7 <b>screen would refresh so they could see what the latest</b></p> <p>8 <b>bid was. They had visibility to see what the lowest</b></p> <p>9 <b>bid was. They knew what their bid was so they knew if</b></p> <p>10 <b>they were lowest bid or not. And then for the period</b></p> <p>11 <b>of time the auction was open, they had opportunity to</b></p> <p>12 <b>continue to bid as much as they wanted to during that</b></p> <p>13 <b>period.</b></p> <p>14 Q. So like a live auction, they -- anybody can decide</p> <p>15 before the gavel comes down to make one more bid to</p> <p>16 sort of put themselves at the head of the line,</p> <p>17 correct?</p> <p>18 <b>A. Correct.</b></p> <p>19 Q. In this instance by offering a lower price than the</p> <p>20 then lowest price, correct?</p> <p>21 <b>A. Correct.</b></p> <p>22 Q. And how often did you use this reverse auction process</p> <p>23 during the time you were an egg buyer?</p> <p>24 <b>A. Twice that I remember.</b></p> <p>25 Q. And do you recall how much movement there was in the</p>

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<p style="text-align: right;">42</p> <p>1 price from the sort of opening bid until sort of the</p> <p>2 final winning bid?</p> <p>3 <b>A. I don't recall.</b></p> <p>4 Q. Are you able to estimate?</p> <p>5 <b>A. No. Not without looking at documents.</b></p> <p>6 Q. Did Kellogg's stay with this reverse auction method in</p> <p>7 egg buying after these -- I think you used the word</p> <p>8 trial. After you conducted this trial?</p> <p>9 <b>A. No.</b></p> <p>10 Q. Why not?</p> <p>11 <b>A. I don't know exactly why not. We didn't use it in the</b></p> <p>12 <b>raw material team after that, after those two examples</b></p> <p>13 <b>that we did.</b></p> <p>14 Q. In terms of a timeframe, when were reverse auctions in</p> <p>15 use for egg buying?</p> <p>16 <b>A. Well, it would have been the bid that I did in 20 --</b></p> <p>17 <b>that was 2003.</b></p> <p>18 Q. Uh-huh.</p> <p>19 <b>A. That would have been the time.</b></p> <p>20 Q. And to your knowledge, by 2004 they weren't using them</p> <p>21 anymore?</p> <p>22 <b>A. Not for the raw material team. It could have been for</b></p> <p>23 <b>packaging or indirect materials.</b></p> <p>24 Q. But for eggs by 2004 they weren't doing reverse</p> <p>25 auctions?</p>	<p style="text-align: right;">44</p> <p>1 trying to locate some documents.</p> <p>2 Neal Exhibit 27 is KEL 00006455. Do you</p> <p>3 recall -- this is an e-mail from a Bruce Pigsley to a</p> <p>4 group of people that includes you. Do you see that?</p> <p>5 <b>A. Yes, I do.</b></p> <p>6 Q. Okay. And who was Bruce Pigsley?</p> <p>7 <b>A. Bruce Pigsley was part of the cost savings team, to the</b></p> <p>8 <b>best of my recollection.</b></p> <p>9 Q. Okay. And the subject was financial review of</p> <p>10 replacement of egg with methocyl at Worthington.</p> <p>11 <b>A. Uh-huh.</b></p> <p>12 Q. Do you recall an initiative involving the replacement</p> <p>13 of egg with methocyl at Worthington?</p> <p>14 <b>A. I do.</b></p> <p>15 Q. Okay. What is methocyl?</p> <p>16 <b>A. Methocyl is short for methycellulose, and it's an</b></p> <p>17 <b>ingredient that has gelling properties.</b></p> <p>18 Q. Okay. What is it made of?</p> <p>19 <b>A. I'd have to -- I'd have to go look at a specification.</b></p> <p>20 Q. It's not egg?</p> <p>21 <b>A. It's not egg, no.</b></p> <p>22 Q. And do you recall the background of this project?</p> <p>23 <b>A. I do.</b></p> <p>24 Q. What was the background of this project?</p> <p>25 <b>A. There were opportunities for cost savings. There was</b></p>
<p style="text-align: right;">43</p> <p>1 <b>A. No.</b></p> <p>2 Q. Do you know how Kellogg's was soliciting bids for egg</p> <p>3 purchase -- egg suppliers once it stopped using reverse</p> <p>4 auctions?</p> <p>5 <b>A. No. It would have been, to my knowledge, just the</b></p> <p>6 <b>typical, you know, RFP, request for proposal. You</b></p> <p>7 <b>would do -- send out Excel spreadsheet with volumes on</b></p> <p>8 <b>it. You would attach to that your specifications, the</b></p> <p>9 <b>plants that it would be shipping to. And then you'd</b></p> <p>10 <b>request pricing to be entered into a model.</b></p> <p>11 Q. So you're just comparing various proposals as opposed</p> <p>12 to running this auction where companies are responding</p> <p>13 to each other?</p> <p>14 <b>A. Correct. You'd have a deadline when pricing was due.</b></p> <p>15 <b>Uh-huh.</b></p> <p>16 MR. GREENE: Can I take a look at the packet.</p> <p>17 MS. ANSARI: Uh-huh.</p> <p>18 BY MR. GREENE:</p> <p>19 Q. Can you take a look at Neal Exhibit 27.</p> <p>20 MR. GREENE: I think I need to look at this</p> <p>21 one.</p> <p>22 MS. ANSARI: That's okay.</p> <p>23 BY MR. GREENE:</p> <p>24 Q. Can I -- I need to have that one in front of me because</p> <p>25 it's in a different spot. I apologize, Ms. Tobey. I'm</p>	<p style="text-align: right;">45</p> <p>1 <b>also a potential opportunity to make the -- our</b></p> <p>2 <b>Worthington product vegan by removing the egg.</b></p> <p>3 Q. And what was the outcome of the project?</p> <p>4 <b>A. I think we were -- at the very end of it, we were able</b></p> <p>5 <b>to remove some of the egg. So we made a partial</b></p> <p>6 <b>replacement, but we did not do 100 percent replacement.</b></p> <p>7 Q. You reduced the amount of egg that was purchased or</p> <p>8 used in each unit of the product; is that correct?</p> <p>9 <b>A. Yes, to the best of my recollection. Yes.</b></p> <p>10 Q. And the -- you say one of the motivations for the</p> <p>11 replacement was to reduce the cost of producing the</p> <p>12 product?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. So this was a way of avoiding some of the costs of</p> <p>15 purchasing egg?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. Do you know when the project was completed?</p> <p>18 <b>A. I don't recall, no.</b></p> <p>19 MR. GREENE: Is exhibit --</p> <p>20 MS. ANSARI: Which one?</p> <p>21 MR. GREENE: The Second Amended Complaint,</p> <p>22 Exhibit 14.</p> <p>23 MR. CAMPBELL: I have it, Bill.</p> <p>24 MS. ANSARI: 22.</p> <p>25 BY MR. GREENE:</p>

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<p style="text-align: right;">46</p> <p>1 Q. Could you look at Neal Exhibit 22.</p> <p>2 MS. ANSARI: Do you want it?</p> <p>3 MR. GREENE: Yeah.</p> <p>4 BY MR. GREENE:</p> <p>5 Q. This one I'm going to underscore the guidance that you</p> <p>6 can read whatever you want, but you're not required to</p> <p>7 read the entire document.</p> <p>8 <b>A. Thank you.</b></p> <p>9 Q. This is the -- Neal Exhibit 22 is a Second Amended</p> <p>10 Complaint filed in the litigation, In re: Processed Egg</p> <p>11 Products Antitrust Litigation, of March 6, 2013. It's</p> <p>12 a 98-page document. And I'll represent to you, and you</p> <p>13 can see in the middle of the page, this is the</p> <p>14 complaint of the plaintiffs that include the Kellogg</p> <p>15 Company. Do you see that?</p> <p>16 <b>A. Yes, I do.</b></p> <p>17 Q. Have you seen this complaint before?</p> <p>18 <b>A. Just this morning --</b></p> <p>19 Q. Okay.</p> <p>20 <b>A. -- briefly.</b></p> <p>21 Q. The first time you saw the complaint?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. Okay. Had you seen any previous versions of the</p> <p>24 complaints in this litigation?</p> <p>25 <b>A. No, I have not.</b></p>	<p style="text-align: right;">48</p> <p>1 20 producers.</p> <p>2 <b>A. Uh-huh.</b></p> <p>3 Q. With layers in production and percent of layers in U.S.</p> <p>4 Do you see that?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Which of these -- looking at these 20 producers, which</p> <p>7 of these companies made proposals to supply Kellogg's</p> <p>8 with egg products during the period when you were egg</p> <p>9 buyer?</p> <p>10 <b>A. I believe that Rose Acre did and then Michaels Foods.</b></p> <p>11 <b>And I believe those are the only -- those are the only</b></p> <p>12 <b>two.</b></p> <p>13 Q. Okay. So you mentioned Michael Foods and Rose Acre.</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Just to be clear, did any of the other 18 producers</p> <p>16 listed in paragraph 105 make proposals to supply</p> <p>17 Kellogg's with egg products?</p> <p>18 <b>A. Not during my tenure that I recollect. No.</b></p> <p>19 Q. During your time as egg buyer, did you have any</p> <p>20 communications with any of the other 18 companies</p> <p>21 listed in the chart in paragraph 105?</p> <p>22 <b>A. No.</b></p> <p>23 Q. Did you think of any of those 18 companies as viable</p> <p>24 candidates to supply Kellogg's with egg products?</p> <p>25 <b>A. No.</b></p>
<p style="text-align: right;">47</p> <p>1 Q. Okay. When was the first time you learned about this</p> <p>2 litigation?</p> <p>3 <b>A. A couple of years ago to the best of my recollection.</b></p> <p>4 Q. Do you know if you heard or learned about the case</p> <p>5 before the lawsuit was filed?</p> <p>6 <b>A. Not to my knowledge, no.</b></p> <p>7 Q. You believe you heard about it after it was filed?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. I'm going to direct your attention to --</p> <p>10 MR. CAMPBELL: 46, Bill.</p> <p>11 BY MR. GREENE:</p> <p>12 Q. -- page 46. Your clairvoyant counsel anticipated.</p> <p>13 Paragraph 105.</p> <p>14 MS. ANSARI: Oh, here.</p> <p>15 BY MR. GREENE:</p> <p>16 Q. And the document is two-sided so that can throw you</p> <p>17 some. We're also going to be looking at page 47. In</p> <p>18 the complaint, which again is a complaint filed by</p> <p>19 Kellogg and other plaintiffs, paragraph 105 says, as of</p> <p>20 2010, the ten largest producers owned approximately</p> <p>21 49 percent of the total industry layers. The top</p> <p>22 20 egg producers owned approximately 55 percent of</p> <p>23 laying hens. Do you see that?</p> <p>24 <b>A. Yes, I do.</b></p> <p>25 Q. And then you see that there is a list of the top</p>	<p style="text-align: right;">49</p> <p>1 MR. GREENE: Okay. Why don't we take a</p> <p>2 break.</p> <p>3 VIDEOGRAPHER: Going off the record at</p> <p>4 9:42 a.m.</p> <p>5 (Recess taken)</p> <p>6 VIDEOGRAPHER: We are back on the record at</p> <p>7 9:47 a.m.</p> <p>8 BY MR. GREENE:</p> <p>9 Q. Ms. Tobey, I'd like you to look at Neal Exhibits 5 and</p> <p>10 4. I'll suggest you look at 5 first. And for the</p> <p>11 record, while you're reading, Exhibit 5 is an e-mail</p> <p>12 from Kelly Tobey to Bob Kellert, Tuesday,</p> <p>13 March, 11th, 2003. It's KEL00018543. And then there's</p> <p>14 an XLS page, second page, of 00018544. And Neal</p> <p>15 Exhibit 4 is bates numbered KEL00021449 through 21461.</p> <p>16 Do you recognize Exhibit 5?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. Okay. And who is Bob Kellert?</p> <p>19 <b>A. Bob Kellert was my sales contact at Bender Goodman. He</b></p> <p>20 <b>represented Michael Foods.</b></p> <p>21 Q. Okay. And the e-mail in the first sentence indicates</p> <p>22 here is the sheet that details out your award by plant</p> <p>23 with a fixed price per pound. Do you see that?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. And the document attached reflects the terms of a fixed</p>



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<p style="text-align: right;">50</p> <p>1 price contract with Bender Goodman?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. And on the second page of Exhibit 5, on the right side</p> <p>4 are all the fixed prices; is that right?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Okay. Okay. Looking now at Exhibit 4. What is</p> <p>7 Exhibit 4, Neal Exhibit 4, I should say?</p> <p>8 <b>A. It looks like a presentation dec that was put together</b></p> <p>9 <b>on the egg portfolio.</b></p> <p>10 Q. All right. Do you recognize the presentation? I can</p> <p>11 represent -- I believe I can represent -- I've got to</p> <p>12 look at my e-mail again. I believe that with the</p> <p>13 production data that Kellogg sent over with the</p> <p>14 document, you were indicated as the custodian for the</p> <p>15 document.</p> <p>16 <b>A. Okay.</b></p> <p>17 Q. Is this a presentation that you did?</p> <p>18 <b>A. I don't recall. But if you have that information, I'd</b></p> <p>19 <b>say that I probably was.</b></p> <p>20 Q. Well, let me show you.</p> <p>21 MR. GREENE: Let's mark this as</p> <p>22 Tobey Exhibit 1.</p> <p>23 (Exhibit No. 1 marked)</p> <p>24 BY MR. GREENE:</p> <p>25 Q. And Tobey Exhibit 1 is KEL00017963. Now, this is --</p>	<p style="text-align: right;">52</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. Okay. And so what is Neal Exhibit 4, the PowerPoint</p> <p>3 presentation?</p> <p>4 <b>A. It looks like it was a presentation -- it looks from</b></p> <p>5 <b>the context of the e-mail that there were -- we were</b></p> <p>6 <b>under contract, and prices were escalating in the</b></p> <p>7 <b>market. And we were reviewing potentially adjusting</b></p> <p>8 <b>the contract and taking pricing out for a longer length</b></p> <p>9 <b>of time.</b></p> <p>10 Q. Okay. So let's break that down a bit. It appears if</p> <p>11 I'm looking at -- your e-mail is written at the end of</p> <p>12 July, July 31st, correct?</p> <p>13 <b>A. Right. Correct.</b></p> <p>14 Q. And then I see some referencing in the PowerPoint</p> <p>15 presentation, Neal Exhibit 4, to August of 2003. For</p> <p>16 example, the third slide, 21451, egg whites update, it</p> <p>17 says market has increased from \$1.67 a pound as of</p> <p>18 January 10th, to \$3.75 a pound as of August 4th. Do</p> <p>19 you see that?</p> <p>20 <b>A. Correct. Yep.</b></p> <p>21 Q. So is it -- is it fair to conclude that this</p> <p>22 presentation was provided to management in August of</p> <p>23 2003?</p> <p>24 <b>A. It's probably fair to conclude that.</b></p> <p>25 Q. All right. You couldn't be providing market prices on</p>
<p style="text-align: right;">51</p> <p>1 these are two e-mails written on July 31st, 2003; is</p> <p>2 that correct? Oh, I'm not connected?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. So I probably got cutoff with my microphone. These are</p> <p>5 two e-mails written July 31, 2003, correct?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. The first is from you to Christine Wentworth?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. At that time Ms. Wentworth was your supervisor?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. And then a reply e-mail from Ms. Wentworth to you; is</p> <p>12 that right?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. Okay. And the subject is egg slides. And there is --</p> <p>15 there is an attachment to the -- your original --</p> <p>16 there's an indication that there was an attachment to</p> <p>17 your original e-mail to Ms. Wentworth.</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. File 2004 risk.PPT. Do you see that?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. I don't believe that the attachment shows up in her</p> <p>22 reply the way Outlook works, but I'm not sure of that.</p> <p>23 In any event, does Tobey Exhibit 1 refresh your</p> <p>24 recollection about the slide presentation that's marked</p> <p>25 as Neal Exhibit 4?</p>	<p style="text-align: right;">53</p> <p>1 August 4th unless it was already August, correct?</p> <p>2 <b>A. Correct. Yes.</b></p> <p>3 Q. In your previous response you observed that prices were</p> <p>4 escalating; is that correct?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Okay. And you had entered into a contract with Bender</p> <p>7 Goodman in about March of 2003?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. Correct. And that was a 12-month contract?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. And so Bender Goodman was then obligated to provide you</p> <p>12 with the egg products indicated at the fixed price in</p> <p>13 the contract, correct?</p> <p>14 <b>A. Correct.</b></p> <p>15 Q. For an entire year?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. And what you're seeing now in August is the price --</p> <p>18 the market prices for the products that Bender Goodman</p> <p>19 was obligated to provide were escalating above the</p> <p>20 amounts in that original contract, correct?</p> <p>21 <b>A. Correct.</b></p> <p>22 Q. So with that as backdrop, what was the purpose of this</p> <p>23 presentation?</p> <p>24 <b>A. You know, to the best of my recollection, I'd say it</b></p> <p>25 <b>was -- we were looking at -- we were potentially then</b></p>



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<p style="text-align: right;">54</p> <p>1 contacted by the supplier, that they wanted some relief</p> <p>2 on the contract, and so we were looking at what they</p> <p>3 had requested versus the contract period we had</p> <p>4 coverage for with them and potentially extending that</p> <p>5 contract out further beyond what we had current</p> <p>6 coverage for.</p> <p>7 Q. When you use the term coverage, what do you mean?</p> <p>8 A. I mean coverage as far as a fixed price contract</p> <p>9 through a certain period of time.</p> <p>10 Q. So when you use the term coverage, it means fixed price</p> <p>11 contract?</p> <p>12 A. Yes.</p> <p>13 Q. And when you get coverage out on a contract, six months</p> <p>14 forward, a year forward, that gives Kellogg's</p> <p>15 protection against rising prices, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And when you don't have coverage, then you have risk</p> <p>18 associated with rising prices, correct?</p> <p>19 A. Yes. It could be the other way around. If it was a</p> <p>20 deescalating market, we would be locked into a price</p> <p>21 higher than market.</p> <p>22 Q. But with coverage, you have a fixed price, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And you know what you're going to pay?</p> <p>25 A. Know what we're going to pay.</p>	<p style="text-align: right;">56</p> <p>1 A. Yes.</p> <p>2 Q. That was also your assessment?</p> <p>3 A. Yes.</p> <p>4 Q. So in the next slide, you include at the top Kellogg</p> <p>5 consideration. So this was the proposal, correct?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And this next slide, I mean, 21456, the</p> <p>8 suggestion is offer Michael Foods some relief while</p> <p>9 ensuring we deliver our 5 and 7 budget savings and</p> <p>10 manage our risk for 2004.</p> <p>11 A. Yes.</p> <p>12 Q. What does that mean?</p> <p>13 A. It means what we were putting together would meet</p> <p>14 requirements for our budget. We would manage risk for</p> <p>15 2004 and give Michaels relief on the escalating market</p> <p>16 for a period of time.</p> <p>17 Q. So just so I understand, when we say relief, what do</p> <p>18 you mean by relief?</p> <p>19 A. By relief, I mean, that the price -- the market price</p> <p>20 where it currently was versus what we agreed to pay on</p> <p>21 our contract was significantly different. So we would</p> <p>22 -- we would decrease that range.</p> <p>23 Q. By relief, fair to say that you would pay Bender</p> <p>24 Goodman more for the egg products -- withdrawn.</p> <p>25 There's a -- the Bender Goodman contract covered the</p>
<p style="text-align: right;">55</p> <p>1 Q. So in this instance you have coverage through early</p> <p>2 2004 at the fixed price, but you have no coverage for</p> <p>3 the remainder of 2004, correct?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. I want to -- again, you can look at any portion</p> <p>6 of a document you want. If you look at KEL00021455,</p> <p>7 you're explaining here that there's dried egg vendor</p> <p>8 issues, correct?</p> <p>9 A. Uh-huh. Yes.</p> <p>10 Q. And Michael Foods -- you write that Michael Foods owns</p> <p>11 40 percent of the flock that supplies their eggs, and</p> <p>12 the remaining 60 percent is contracted out, correct?</p> <p>13 A. Yes.</p> <p>14 Q. So you understand Michael Foods was buying a</p> <p>15 substantial volume of their eggs?</p> <p>16 A. Yes.</p> <p>17 Q. And you note in the bullet second from the bottom, the</p> <p>18 remaining volume owed to Kellogg's multiplied by</p> <p>19 today's market price will put Michael Foods at a</p> <p>20 \$4,600,000 loss on our contract. Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. And that was your assessment at the time?</p> <p>23 A. That was my assessment at the time.</p> <p>24 Q. And you also write that the 4.6 million could easily</p> <p>25 exceed 6 million if prices continue to rise, correct?</p>	<p style="text-align: right;">57</p> <p>1 period from early 2003 to early 2004?</p> <p>2 A. Correct.</p> <p>3 Q. And you had a contractual right to demand all the egg</p> <p>4 products under that contract under the original fixed</p> <p>5 prices, correct?</p> <p>6 A. That's correct.</p> <p>7 Q. When you talk about relief, you talk about offering to</p> <p>8 pay more for the -- those egg products during that</p> <p>9 contract period than the contracted price?</p> <p>10 A. Yes. As part of that relief. So that's specific to</p> <p>11 that portion. But then the other adjustment would be</p> <p>12 we're looking out at the part of 2004 that we didn't</p> <p>13 have coverage and where we thought the market was going</p> <p>14 to be. So you negotiate that price earlier, you know,</p> <p>15 based on what our anticipation was of where market</p> <p>16 would go. So potentially offsetting some future cost</p> <p>17 increase.</p> <p>18 Q. So there's a trade going on here?</p> <p>19 A. Yes.</p> <p>20 Q. You're saying to Bender Goodman and to Michael Foods</p> <p>21 we'll pay you more than we're obligated to pay you</p> <p>22 during the contractual period early 2003 to early</p> <p>23 2004.</p> <p>24 A. Yes.</p> <p>25 Q. And in exchange for that, we will get a favorable</p>

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<p style="text-align: right;">58</p> <p>1 contract that will extend coverage into 2004, the rest 2 of 2004?</p> <p>3 <b>A. Correct. For some period, yeah. I don't know the 4 exact period. But correct.</b></p> <p>5 Q. Okay. In order to offer that kind of price relief, 6 you'd be looking for a good contract for 2004, correct?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. You were looking for some kind of trade off or 9 compensation for the price relief, right?</p> <p>10 <b>A. Right.</b></p> <p>11 Q. So the -- if we flip a couple more pages to 21458 -- 12 I'm sorry. Let's go to 21457. We'll look at both 13 21457 and 21458 because 21457 says potential Kellogg 14 offer 2003 and 21458 says potential Kellogg offer 2004. 15 So they kind of go together as a set, don't they?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. Okay. So the offer for 2003, 21457, is you say I have 18 an offer that would increase Michael Foods contract by 19 \$125,000 in 2003, correct?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. You're saying you're going to pay \$125,000 more in 2003 22 than they're entitled to receive under the contract?</p> <p>23 <b>A. Correct.</b></p> <p>24 Q. And then if you go to 21458, you have the potential 25 Kellogg offer of 2004, correct?</p>	<p style="text-align: right;">60</p> <p>1 Q. And so, for example, in the next slide, 21459, where 2 you write egg white offer slash risk, at the bottom of 3 the chart, it says Kellogg's price will remain at \$1 a 4 pound under the market for all of 2004. And you point 5 out the current contract allows for seven months of 6 risk in 2004, correct?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. Okay.</p> <p>9 <b>A. Correct.</b></p> <p>10 Q. So without a new contract, you're at risk for seven 11 months in 2004, correct?</p> <p>12 <b>A. Correct.</b></p> <p>13 Q. But under this proposal, you get coverage, a fixed 14 price for the remainder of 2004, correct?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. Okay. And did Kellogg's go forward on this proposal?</p> <p>17 <b>A. I honestly don't remember.</b></p> <p>18 Q. Okay.</p> <p>19 MR. CAMPBELL: Are you through with that 20 exhibit, Bill?</p> <p>21 MR. GREENE: I think so, yeah.</p> <p>22 MR. CAMPBELL: Do you need an exhibit?</p> <p>23 MR. GREENE: I do, but I don't know if I 24 marked it. Let's go off for just a moment.</p> <p>25 VIDEOGRAPHER: Going off the record at</p>
<p style="text-align: right;">59</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. Okay. And here you are proposing to start a new 3 12-month contract January 1, 2004, on the egg whites. 4 The new 12-month contract would bring your coverage out 5 into -- all the way through the end of 2004, correct?</p> <p>6 <b>A. Correct.</b></p> <p>7 Q. You didn't have that at the point -- at the time you're 8 presenting this slide presentation you didn't have 9 coverage for the last --</p> <p>10 <b>A. Nine.</b></p> <p>11 Q. -- nine months or so of 2004?</p> <p>12 <b>A. Correct.</b></p> <p>13 Q. But under this proposal you would have that coverage, a 14 fixed price contract for the remainder of 2004, 15 correct?</p> <p>16 <b>A. Correct.</b></p> <p>17 Q. And you're proposing to offer a floor and ceiling on 18 the market price such that Kellogg's price would remain 19 a dollar a pound below market, correct?</p> <p>20 <b>A. Correct.</b></p> <p>21 Q. And that would be a good deal for Kellogg's, correct?</p> <p>22 <b>A. Correct.</b></p> <p>23 Q. Because you can't go out to any supplier and say I want 24 a dollar below the market, right?</p> <p>25 <b>A. Right.</b></p>	<p style="text-align: right;">61</p> <p>1 10:08 a.m. 2 (Recess taken) 3 VIDEOGRAPHER: We're back on the record at 4 10:10 a.m. 5 BY MR. GREENE: 6 Q. I'm going to ask you to take a look at Neal Exhibit 6. 7 <b>A. Yes.</b> 8 Q. I'll point out to you that Neal Exhibit 6, it doesn't 9 list you as a sender -- oh, I'm sorry. Neal Exhibit 6 10 on the front end you are the sender. From 11 bobeggs@aol.com to Kelly Tobey. 12 <b>A. Yeah. I was the receiver. Yep.</b> 13 Q. You receive that, and then there was an attachment. I 14 meant the attachment didn't have you as a sender or 15 receiver. So subsequent to your August 2003 slide 16 presentation, did you enter into further negotiations 17 with Bender Goodman? 18 <b>A. Yes.</b> 19 Q. Okay. And as a result of those negotiations, did you 20 enter into an agreement to give Bender Goodman and 21 Michael Foods price relief from the contract -- fixed 22 price contract we looked at earlier? 23 <b>A. Yes. From looking at this, it looked like we did. 24 Yes.</b> 25 Q. And if you look at part of the second page of the</p>

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<p style="text-align: right;">62</p> <p>1 proposal -- I'm sorry. The second page of Exhibit 6,</p> <p>2 you agreed on a contract that would extend the whole</p> <p>3 egg supply through December 31st, 2004, correct?</p> <p>4 <b>A. Correct.</b></p> <p>5 Q. Okay. And it was at a fixed price of \$2.43 per pound</p> <p>6 delivered with usual freight adjustments?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. And that price was higher than the price that Bender</p> <p>9 Goodman was entitled to under the contract executed in</p> <p>10 early 2003, correct?</p> <p>11 <b>A. I believe so. I'd have to go look at that.</b></p> <p>12 Q. Why don't you go back and look.</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. So you granted some price relief?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. And in exchange you got coverage through the remainder</p> <p>17 of 2004, correct?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. Now, by the time this contract expired in December of</p> <p>20 2004, this most recent contract, you were already done</p> <p>21 with your position purchasing eggs, correct?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. Okay. So you didn't -- withdrawn. Did you negotiate</p> <p>24 the next major egg products contract for Kellogg's?</p> <p>25 <b>A. Not to my knowledge, no.</b></p>	<p style="text-align: right;">64</p> <p>1 Q. Okay. What do you recall about those discussions?</p> <p>2 <b>A. I just recall that it was being mentioned. I believe</b></p> <p>3 <b>-- I'm not sure of the timeframe. But that it was an</b></p> <p>4 <b>initiative somewhat driven by Wal-Mart. And that's</b></p> <p>5 <b>really the extent of what I had heard about it.</b></p> <p>6 Q. And who did you hear that from?</p> <p>7 <b>A. I don't remember exactly. I would say it was</b></p> <p>8 <b>information from suppliers.</b></p> <p>9 Q. And you don't recall which suppliers?</p> <p>10 <b>A. No, I don't.</b></p> <p>11 Q. Do you recall what they -- the suppliers who spoke to</p> <p>12 you, do you recall what they said about Wal-Mart?</p> <p>13 <b>A. I just remember the topic being about the size of space</b></p> <p>14 <b>in the cage for the hens.</b></p> <p>15 Q. Do you recall what -- sort of what Wal-Mart's place was</p> <p>16 in that discussion?</p> <p>17 <b>A. They wanted more space for the hens.</b></p> <p>18 Q. So you were hearing from suppliers that Wal-Mart wanted</p> <p>19 more space in the cage for the hens?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. Okay. Do you recall anything else about animal welfare</p> <p>22 during that period?</p> <p>23 <b>A. No.</b></p> <p>24 Q. Do you recall a program called the UEP Certified</p> <p>25 Program?</p>
<p style="text-align: right;">63</p> <p>1 Q. Do you know anything about the terms of later egg</p> <p>2 products contracts that were negotiated between</p> <p>3 Kellogg's and egg products suppliers?</p> <p>4 <b>A. No, I don't.</b></p> <p>5 Q. During the period that you were purchasing egg products</p> <p>6 for Kellogg's -- and let's set up that period again.</p> <p>7 It's -- remind me start and finish dates.</p> <p>8 <b>A. 2002 -- probably late summer or early fall 2002 through</b></p> <p>9 <b>early 2004.</b></p> <p>10 Q. Thank you.</p> <p>11 <b>A. 2004. Yep.</b></p> <p>12 Q. I know you testified to that before.</p> <p>13 <b>A. Yep.</b></p> <p>14 Q. Did you -- withdrawn. Were you aware of any policies</p> <p>15 at Kellogg's regarding animal welfare?</p> <p>16 <b>A. No.</b></p> <p>17 Q. Do you recall any discussions within Kellogg's about</p> <p>18 animal welfare issues related to the treatment of layer</p> <p>19 hens?</p> <p>20 <b>A. No.</b></p> <p>21 Q. The topic never came up to your recollection?</p> <p>22 <b>A. No.</b></p> <p>23 Q. Do you recall the topic coming up in discussions with</p> <p>24 any egg product suppliers?</p> <p>25 <b>A. Yes.</b></p>	<p style="text-align: right;">65</p> <p>1 <b>A. No.</b></p> <p>2 Q. It doesn't ring any bell for you?</p> <p>3 <b>A. I mean, I know it's United Egg Producers.</b></p> <p>4 Q. Right.</p> <p>5 <b>A. But beyond that, no.</b></p> <p>6 Q. But during the period when you were a buyer, you don't</p> <p>7 recall hearing anything about that program?</p> <p>8 <b>A. No.</b></p> <p>9 Q. Do you recall hearing anything about animal welfare</p> <p>10 standards being implemented in -- among egg producers?</p> <p>11 <b>A. No.</b></p> <p>12 MR. GREENE: Let's take a break. We're</p> <p>13 almost done. I need to just dig through. I don't need</p> <p>14 to make her sit here while I dig through to look for a</p> <p>15 document.</p> <p>16 VIDEOGRAPHER: Going off the record at</p> <p>17 10:18 a.m.</p> <p>18 (Recess taken)</p> <p>19 VIDEOGRAPHER: We're back on the record at</p> <p>20 10:30 a.m.</p> <p>21 BY MR. GREENE:</p> <p>22 Q. We were talking about animal welfare before the break,</p> <p>23 Ms. Tobey. Can you look at Neal Exhibit 23. This is a</p> <p>24 procurement overview 4/1/04, KEL00003178 through 3228.</p> <p>25 And, again, this is one of those large documents where</p>

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<p style="text-align: right;">66</p> <p>1 I tell you you can read as much of it as you want. But</p> <p>2 I'm going to direct you to the page that ends 3209,</p> <p>3 which is closer to the back.</p> <p>4 <b>A. Okay.</b></p> <p>5 Q. Do you recognize this type of document, procurement</p> <p>6 overview?</p> <p>7 <b>A. Yes, I do.</b></p> <p>8 Q. And what is a procurement overview?</p> <p>9 <b>A. This would have been a document put out I believe it</b></p> <p>10 <b>was on a monthly basis, and it encompassed the whole</b></p> <p>11 <b>raw material spend in departments. So it would give an</b></p> <p>12 <b>update on coverage, where we had open and then how we</b></p> <p>13 <b>were doing against market.</b></p> <p>14 Q. And before we said coverage. Where you had the fixed</p> <p>15 price contracts in place?</p> <p>16 <b>A. Yes. So volumes. Yes.</b></p> <p>17 Q. And were you still involved in eggs in April 2004?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. Okay. So as the person involved in egg buying, would</p> <p>20 you prepare the pages that would concern eggs?</p> <p>21 <b>A. I would have given information to our risk management</b></p> <p>22 <b>team, and they put these decs together.</b></p> <p>23 Q. I want to just direct your attention toward the bottom</p> <p>24 of the page where it says risks and opportunities to</p> <p>25 strategy.</p>	<p style="text-align: right;">68</p> <p>1 <b>hearing from market.</b></p> <p>2 Q. And his name, is it Jim Roestel?</p> <p>3 <b>A. Roestel, R-O-E-S-T-E-L.</b></p> <p>4 Q. To your knowledge, did Mr. Roestel's responsibilities</p> <p>5 include tracking developments in the -- among egg</p> <p>6 producers?</p> <p>7 <b>A. No.</b></p> <p>8 Q. Now, looking at this line from slide 3209 in April of</p> <p>9 2004, what did you mean when it says new flocks must be</p> <p>10 given increased cage space per animal welfare</p> <p>11 guidelines?</p> <p>12 <b>A. Would have been that any new birds in the cages had to</b></p> <p>13 <b>have -- there was increased space regulations.</b></p> <p>14 Q. You became aware -- did you become aware of such</p> <p>15 increased space regulations at the time that you were</p> <p>16 an egg buyer?</p> <p>17 <b>A. Just to the knowledge that I shared in my earlier</b></p> <p>18 <b>testimony, that I was aware that Wal-Mart -- it was</b></p> <p>19 <b>something that they were pushing.</b></p> <p>20 Q. And beyond Wal-Mart pushing it, were you aware of any</p> <p>21 actions that were taken either by any groups or</p> <p>22 governmental organizations to establish cage space per</p> <p>23 animal welfare guidelines?</p> <p>24 <b>A. No.</b></p> <p>25 Q. So this doesn't refresh your recollection as to</p>
<p style="text-align: right;">67</p> <p>1 <b>A. Uh-huh.</b></p> <p>2 Q. It says farmers holding onto older hens due to</p> <p>3 increased profits. Do you see that?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. And then it says, new flock must be given increased</p> <p>6 cage space per animal welfare guidelines. Do you see</p> <p>7 that?</p> <p>8 <b>A. I do.</b></p> <p>9 Q. Would you have been the person providing that</p> <p>10 information for this dec?</p> <p>11 <b>A. I would have been the person giving some direction to</b></p> <p>12 <b>this information. Yes. So this could have come from</b></p> <p>13 <b>myself. It could have also come from our risk</b></p> <p>14 <b>management team.</b></p> <p>15 Q. When you say the "risk management team," who are you</p> <p>16 referring to?</p> <p>17 <b>A. There was a gentleman, Jim Roestel.</b></p> <p>18 Q. And what would his -- what would his responsibilities</p> <p>19 had been?</p> <p>20 <b>A. He was responsible mostly for the grains that we buy on</b></p> <p>21 <b>the Board of Trade. So to make recommendations on when</b></p> <p>22 <b>we should lock in pricing and for how long. But he</b></p> <p>23 <b>also got involved in discussions on other categories.</b></p> <p>24 <b>So we would very typically have discussions on here's</b></p> <p>25 <b>what we're hearing from suppliers, here's what we're</b></p>	<p style="text-align: right;">69</p> <p>1 anything beyond what you testified before about</p> <p>2 Wal-Mart?</p> <p>3 <b>A. No.</b></p> <p>4 MR. GREENE: Let's mark this as Tobey 2.</p> <p>5 (Exhibit No. 2 marked)</p> <p>6 BY MR. GREENE:</p> <p>7 Q. I'm showing you what's been marked as Tobey Exhibit 2,</p> <p>8 KEL00021208 through 21254. The cover reads</p> <p>9 proceedings, future trends in animal agriculture,</p> <p>10 standards for food animal production, status,</p> <p>11 wellbeing, and social responsibility, September 28 --</p> <p>12 I'm sorry. September 18, 2002. With an address in</p> <p>13 Washington, D.C. Do you see that?</p> <p>14 <b>A. I do, yes.</b></p> <p>15 Q. In September of 2002, were you the egg buyer at</p> <p>16 Kellogg's?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. Okay. Did you attend what appears to be this program</p> <p>19 in Washington, D.C., on future trends in animal</p> <p>20 agriculture?</p> <p>21 <b>A. No, I did not.</b></p> <p>22 Q. Do you know whether anyone at Kellogg's attended this</p> <p>23 program?</p> <p>24 <b>A. No.</b></p> <p>25 Q. It has a Kellogg's production stamp on it. So just</p>

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19 (Pages 70 to 73)

<p style="text-align: right;">70</p> <p>1 asking do you know how it is this particular document 2 came to be in Kellogg's possession?</p> <p>3 <b>A. I don't, no.</b></p> <p>4 Q. Did you have any discussions with anybody about -- 5 withdrawn. Since you left the position involving 6 purchasing egg products -- which you left in 2004, 7 correct?</p> <p>8 <b>A. Correct.</b></p> <p>9 Q. Since that time, have you had any positions that have 10 been involved in any way with egg products?</p> <p>11 <b>A. When I joined the quality team, Dan Bigelow was one of</b> 12 <b>my direct reports. So this would have been in 2012.</b> 13 <b>And he had oversight from a quality perspective for</b> 14 <b>eggs for a period of time.</b></p> <p>15 Q. He had responsibility related to eggs?</p> <p>16 <b>A. From a quality perspective.</b></p> <p>17 Q. From a quality perspective?</p> <p>18 <b>A. From a quality perspective.</b></p> <p>19 Q. Did you deal with any issues relating to eggs during 20 that period?</p> <p>21 <b>A. No. Not that I -- not that I recall.</b></p> <p>22 Q. So even though it was in his area of responsibility, 23 you don't recall him bringing you any issues relating 24 to eggs?</p> <p>25 <b>A. No.</b></p>	<p style="text-align: right;">72</p> <p>1 Q. But coverage can also mean under a contract it's just 2 an egg supplier's covering your needs for a certain 3 point of time, correct?</p> <p>4 <b>A. Right.</b></p> <p>5 Q. And that could be at a fixed price, correct?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. But it could also be at a fluctuating price?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. So coverage means that a supplier is providing eggs 10 that you need for a certain amount of time?</p> <p>11 <b>A. Correct.</b></p> <p>12 Q. At whatever price?</p> <p>13 <b>A. Right.</b></p> <p>14 Q. Do you recall Mr. Greene showing you an exhibit, the 15 Second Amended Complaint, correct?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. Okay. And that listed 20 suppliers, correct?</p> <p>18 <b>A. Right.</b></p> <p>19 Q. And you recalled two suppliers, Rose Acre and Michael 20 Foods, providing eggs to Kellogg, correct?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. Okay. If any of the other 18 suppliers responded to an 23 RFP, would you have considered those suppliers?</p> <p>24 <b>A. I would have, yes.</b></p> <p>25 Q. Okay. Can you take a look at exhibit -- Neal Exhibit</p>
<p style="text-align: right;">71</p> <p>1 Q. Do you recall any discussions with anybody about animal 2 welfare issues other than what you've already testified 3 to today?</p> <p>4 <b>A. No.</b></p> <p>5 MR. GREENE: Okay. I don't have anything 6 further at this time.</p> <p>7 MR. CAMPBELL: Do you need the documents?</p> <p>8 MS. ANSARI: Yes. I need Exhibit 10 or 11.</p> <p>9 MR. CAMPBELL: Do you have it there, Kelly?</p> <p>10 MS. ANSARI: She has it, but I wanted to see 11 if we had it in front of us. Okay. Here's 10. I've 12 got it.</p> <p>13 EXAMINATION</p> <p>14 BY MS. ANSARI:</p> <p>15 Q. Good afternoon, Ms. Tobey -- or good morning. I just 16 have a couple questions for you, and then we can get 17 out of here.</p> <p>18 <b>A. Okay.</b></p> <p>19 Q. A couple of times during your testimony -- Mr. Greene's 20 questioning, he talked about the term coverage. Do you 21 remember that?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. And coverage -- he discussed that coverage meant a 24 contract being at a fixed price, correct?</p> <p>25 <b>A. Yes.</b></p>	<p style="text-align: right;">73</p> <p>1 11. Do you recall when Mr. Greene asked you the 2 question about Kellogg's purchases of egg white solids 3 being based on quality, not price?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. Okay. If several suppliers could meet quality 6 standards, would price play into your decision making?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. Can you turn to Neal Exhibit 4, please.</p> <p>9 <b>A. Yep.</b></p> <p>10 Q. Okay. And if you could turn to the page that ends 11 bates No. 1458. It's titled Potential Kellogg Offer 12 2004.</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. Do you see where it says -- at the top of this page it 15 says Potential Offer, Kellogg Offer 2004, correct?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. Do you see the second bullet point states offer of 18 floor and ceiling on the market price. Kellogg's price 19 will remain \$1 per pound below market. Do you see 20 that?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. Okay. Is the market price the same as Urner Barry 23 market pricing?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. So your potential Kellogg offer in 2004 would be based</p>

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<p style="text-align: right;">74</p> <p>1 on an Urner Barry market price minus \$1, correct?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. So the price would fluctuate?</p> <p>4 <b>A. Yes. That's true.</b></p> <p>5 Q. And it would not be a fixed price?</p> <p>6 <b>A. Correct.</b></p> <p>7 Q. Okay. And this is for egg whites?</p> <p>8 <b>A. This was for egg whites.</b></p> <p>9 Q. Okay. If you could take a look at Exhibit 6, please.</p> <p>10 Turn to the Exhibit 6. I'm going to direct your</p> <p>11 attention to the second to last paragraph that starts</p> <p>12 with on -- and I'll read it.</p> <p>13 It states on April 15th, 2004, the Urner</p> <p>14 Barry truckload average price per pound for dried egg</p> <p>15 whites will be used to calculate thusly. If the Urner</p> <p>16 Barry average price exceeds \$6.07 per pound, the</p> <p>17 difference above that amount will be divided in half</p> <p>18 and added to the selling price. Do you see where it</p> <p>19 says that?</p> <p>20 <b>A. Yes, I do.</b></p> <p>21 Q. So for dried egg whites, the price would be based on</p> <p>22 Urner Barry, correct?</p> <p>23 <b>A. Correct.</b></p> <p>24 Q. And it would fluctuate?</p> <p>25 <b>A. Yes.</b></p>	<p style="text-align: right;">76</p> <p>1 <b>A. Yes, for whole eggs. Yes.</b></p> <p>2 Q. Okay. Ms. Ansari asked you about the 18 suppliers. Do</p> <p>3 you recall that we showed you the Second Amended</p> <p>4 Complaint? There were 20 suppliers -- I'm sorry.</p> <p>5 There were 20 egg producers listed with the number of</p> <p>6 their layer hens, correct?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. And you identified two that you had -- I believe had</p> <p>9 made proposals to supply Kellogg's with egg products,</p> <p>10 correct?</p> <p>11 <b>A. Correct.</b></p> <p>12 Q. Okay. And Ms. Ansari asked, I think, before in her</p> <p>13 questioning if any of them had come to you, you would</p> <p>14 have considered a proposal or something along those</p> <p>15 lines, correct?</p> <p>16 <b>A. Correct.</b></p> <p>17 Q. Do you know if any of those 18 companies were capable</p> <p>18 of producing egg products?</p> <p>19 <b>A. No.</b></p> <p>20 Q. So as you sit here today, you don't know whether any of</p> <p>21 those 18 companies even produced egg products?</p> <p>22 <b>A. Correct.</b></p> <p>23 Q. Okay.</p> <p>24 MR. GREENE: Now we do need to go off because</p> <p>25 you need to show me.</p>
<p style="text-align: right;">75</p> <p>1 Q. So it would not be fixed?</p> <p>2 <b>A. Correct.</b></p> <p>3 MS. ANSARI: I have no further questions.</p> <p>4 MR. GREENE: Okay. I have some followup.</p> <p>5 FURTHER EXAMINATION</p> <p>6 BY MR. GREENE:</p> <p>7 Q. If you could, take a look at Exhibit 6 again.</p> <p>8 Ms. Ansari was just questioning you about it.</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. Just to be clear, the contract that you entered with</p> <p>11 Bender Goodman in early 2004, the price of whole eggs</p> <p>12 was to be fixed for the remainder of the year, correct?</p> <p>13 <b>A. That's true, yes.</b></p> <p>14 Q. Okay. And you were coming off of a fixed price</p> <p>15 contract with Bender Goodman from early 2003 to early</p> <p>16 2004, correct?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. And we had looked at the document where there was a</p> <p>19 long list of fixed prices that Bender Goodman was</p> <p>20 offering, correct?</p> <p>21 <b>A. Correct.</b></p> <p>22 Q. Okay. And when you sign the new contract that</p> <p>23 summarized in Neal Exhibit 6 as to whole eggs, you,</p> <p>24 again, fixed the price for the remainder of the year,</p> <p>25 correct?</p>	<p style="text-align: right;">77</p> <p>1 VIDEOGRAPHER: Going off the record at</p> <p>2 10:47 a.m.</p> <p>3 (Recess taken)</p> <p>4 VIDEOGRAPHER: We are back on the record at</p> <p>5 10:50 a.m.</p> <p>6 BY MR. GREENE:</p> <p>7 Q. Ms. Tobey, do you recall this morning I asked you about</p> <p>8 coverage in the context of the Bender Goodman contract?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. And I think you told me one of the reasons Kellogg's</p> <p>11 wants to get coverage is to protect itself against</p> <p>12 future risk, correct?</p> <p>13 <b>A. Correct.</b></p> <p>14 Q. Getting coverage is a way to reduce or eliminate risk,</p> <p>15 correct?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. Okay. And this morning when I asked you when you use</p> <p>18 the term coverage, what do you mean, you said I mean,</p> <p>19 coverage as far as a fixed price contract through a</p> <p>20 certain period of time. Do you recall that?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. And I asked you, so when you use the term coverage, it</p> <p>23 means fixed price contract. And you said yes. Do you</p> <p>24 recall that?</p> <p>25 <b>A. Yes.</b></p>



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<p style="text-align: right;">78</p> <p>1 Q. And is that still your testimony?</p> <p>2 <b>A. Coverage can mean fixed price. Coverage could also be</b></p> <p>3 <b>volume over a period of time for a price that moves</b></p> <p>4 <b>within a window, because I would consider coverage in</b></p> <p>5 <b>the document you showed me where we had a price window</b></p> <p>6 <b>on Urner Barry and that price would fluctuate. That's</b></p> <p>7 <b>coverage as well for our volume, but not at a fixed</b></p> <p>8 <b>price.</b></p> <p>9 Q. So are you changing your testimony from the testimony</p> <p>10 this morning?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. Okay. Now, one of the -- if one of the goals of</p> <p>13 coverage is eliminating risk, one of the risks that</p> <p>14 you're attempting to eliminate is the risk that the</p> <p>15 market is going to escalate, correct?</p> <p>16 <b>A. That's correct. But it could also be eliminating risk</b></p> <p>17 <b>or understanding what we're -- what pricing we're going</b></p> <p>18 <b>to take on or what level we're willing to have for</b></p> <p>19 <b>risk. And remember, I also stated that you could be in</b></p> <p>20 <b>a deescalating market.</b></p> <p>21 Q. Right. So if you have a contract that is tied to Urner</p> <p>22 Barry prices, then Kellogg's is -- would be at risk for</p> <p>23 paying more money for its eggs as the Urner Barry</p> <p>24 market went up, correct?</p> <p>25 <b>A. That's correct.</b></p>	<p style="text-align: right;">80</p> <p>1 <b>market. So that would be fluctuated pricing. But we</b></p> <p>2 <b>had a contract which could be characterized as coverage</b></p> <p>3 <b>for a period of time. But we had an agreement that</b></p> <p>4 <b>within that contract, price would fluctuate at a</b></p> <p>5 <b>certain interval.</b></p> <p>6 Q. Okay. Were there contracts you entered into where</p> <p>7 there was some kind of index mechanism but also a</p> <p>8 ceiling?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. So even the market mechanism could bring the price up</p> <p>11 to a certain level. But once the market went higher,</p> <p>12 the price would be set at the ceiling, correct?</p> <p>13 <b>A. Correct.</b></p> <p>14 Q. Even though there's a market mechanism there, that kind</p> <p>15 of contract would at least protect you against rising</p> <p>16 prices above the ceiling, correct?</p> <p>17 <b>A. Right. And we had the one with the ceiling. But we</b></p> <p>18 <b>also had when it went above that, we split the</b></p> <p>19 <b>difference. So the ceiling wasn't the absolute top.</b></p> <p>20 Q. And then when you -- when you split the difference,</p> <p>21 then that reduces the impact of the higher market price</p> <p>22 on Kellogg's as compared to bearing the whole market</p> <p>23 price?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. Let me rephrase the last question because I'm not sure</p>
<p style="text-align: right;">79</p> <p>1 Q. Okay. And one of the things that Kellogg's was looking</p> <p>2 to do when it tried to secure coverage was to eliminate</p> <p>3 that very risk, correct?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. Okay. And so when you used the term coverage, you were</p> <p>6 talking about ways to avoid the risks associated with a</p> <p>7 rising Urner Barry market, correct?</p> <p>8 MS. ANSARI: Objection. Mischaracterizes her</p> <p>9 testimony.</p> <p>10 BY MR. GREENE:</p> <p>11 Q. Is that correct?</p> <p>12 <b>A. Coverage can mean different things. So I'd say</b></p> <p>13 <b>coverage could be fixed price for a period of time. It</b></p> <p>14 <b>can be a volume contract that you're going to deliver</b></p> <p>15 <b>X amount of volume or that volume goes up or down. You</b></p> <p>16 <b>have to deliver all the volume we require within a</b></p> <p>17 <b>certain price fluctuation. So it can be -- it can be</b></p> <p>18 <b>either way.</b></p> <p>19 Q. When you say "within a certain price fluctuation,"</p> <p>20 would that include a ceiling?</p> <p>21 <b>A. It could, yes.</b></p> <p>22 Q. And when you have a ceiling, you may have an index</p> <p>23 price subject to a ceiling, correct?</p> <p>24 <b>A. We may. We also had whole egg liquid egg prices that</b></p> <p>25 <b>were recalculated every three months based on the</b></p>	<p style="text-align: right;">81</p> <p>1 -- even though you answered it, I'm not sure how clear</p> <p>2 it was.</p> <p>3 When you have a mechanism -- pricing</p> <p>4 mechanism where the buyer and seller split any increase</p> <p>5 in the market index above a particular ceiling, then</p> <p>6 the buyer and seller are sharing the risk of price</p> <p>7 increases above the ceiling, correct?</p> <p>8 <b>A. Correct.</b></p> <p>9 Q. And by sharing it, at least Kellogg's reduces some of</p> <p>10 the risk, correct?</p> <p>11 <b>A. Correct.</b></p> <p>12 Q. During the breaks did you discuss your testimony at all</p> <p>13 with Counsel?</p> <p>14 <b>A. No.</b></p> <p>15 MR. GREENE: I have nothing further.</p> <p>16 MR. CAMPBELL: I get to ask my questions now.</p> <p>17 MR. GREENE: Okay.</p> <p>18 MS. ANSARI: We have nothing.</p> <p>19 MR. CAMPBELL: Thanks. We have nothing.</p> <p>20 MS. ANSARI: Nothing further.</p> <p>21 MR. CAMPBELL: We have no further questions.</p> <p>22 We will not waive signature. We will -- thanks, Mark.</p> <p>23 We will read and sign.</p> <p>24 VIDEOGRAPHER: All right. This concludes the</p> <p>25 deposition. We're going off the record at 10:57 a.m.</p>



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<div style="text-align: right;">82</div> <div style="margin-top: 10px;"> <p>(Deposition concluded at 10:57 a.m.)</p> <p style="text-align: center;">* * *</p> </div>	<div style="text-align: right;">84</div> <div style="margin-top: 10px;"> <p style="text-align: center;">CERTIFICATE OF NOTARY PUBLIC</p> <p>STATE OF MICHIGAN )</p> <p style="text-align: center;">)</p> <p>COUNTY OF MACOMB )</p> <p>I, Trisha N. Cameron, Certified Shorthand Reporter and Notary Public in and for the State of Michigan, do hereby certify that the witness whose attached deposition was taken before me in the above cause was first duly sworn or affirmed to testify to the truth, the whole truth, and nothing but the truth; that the testimony contained herein was by me reduced to writing in the presence of the witness by means of Stenography; afterwards transcribed by means of computer-aided transcription; and that the deposition is a true and complete transcript of the testimony given by the witness to the best of my ability. I further certify I am not connected by blood or marriage with any of the parties, their attorneys or agents; that I am not an employee of either of them; and that I am not interested directly, indirectly, or financially in the matter of controversy.</p> <div style="text-align: right; margin-top: 10px;"> <p>_____ Trisha N. Cameron, RPR, CSR-6175 Notary Public, Macomb County, Michigan My Commission Expires 5-24-18</p> </div> </div>
<div style="text-align: right;">83</div> <div style="margin-top: 10px;"> <p style="text-align: center;">ACKNOWLEDGMENT OF DEPONENT</p> <p>I, _____, do hereby acknowledge that I have read and examined the foregoing testimony, and the same is a true, correct and complete transcription of the testimony given by me, and any corrections appear on the attached Errata Sheet signed by me.</p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 45%;"> <p>_____ (DATE)</p> </div> <div style="width: 45%;"> <p>_____ (SIGNATURE)</p> </div> </div> </div>	Empty space for page 84 content

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